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ON

THE PUNISHMENT OF DEATH

IN

THE METROPOLIS.

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LONDON:
C. ROWORTH AND SONS, BELL YARD,
TEMPLE BAR.

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FACTS

RELATING TO

THE PUNISHMENT OF DEATH

IN THE

METROPOLIS.

BY

EDWARD GIBBON WAKEFIELD, ESQ.

LONDON:
JAMES RIDGWAY, 169, PICCADILLY.
MDCCCXXXI.

1831

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HISTORY

INTRODUCTION.

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THE object of the following pages is to lay before the public some information illustrative of the effects of Capital Punishment, as administered in London and Middlesex.

Part of the facts stated are derived from a Return made to the House of Commons early in the present year; but the greater number of those facts came under the observation of the writer himself, during his confinement for three years in the county jail of London and Middlesex.

The Return to the House of Commons relates to the period of the writer's imprisonment, viz. from May, 1827, to May, 1830. He procured that return for the purpose of referring to an

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official document in elucidation of the circumstances of which he had obtained a personal knowledge.

The Return to the House of Commons fills thirty folio pages; but the more important part of the information contained in it will be found in eleven Tables prepared from the Return. The first Table gives a General Statement of the *age*, *sex*, and *fate* of all persons committed for trial on the capital charge for three years, excepting a small number charged with nameless offences, which have been purposely omitted. The next nine Tables show the *number*, the *age*, the *sex*, and the *fate* of persons charged with each of the more common offences; whilst the last Table gives a similar statement concerning several rare offences, as to which it was not thought worth while to frame a separate table for each.

By means of these Tables the reader will

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learn, both as to each more common offence, and as to capital offences generally, 1st, the proportion of males to females; 2d, the ages at which crimes are most commonly committed; 3d, the proportion *to commitments* of—1st, failures in the prosecution; 2d, bills ignored; 3d, acquittals; 4th, convictions of minor offence; 5th, capital convictions; 6th, sentences remitted; 7th, capital convicts ordered for execution; and, 8th, executions,—as well as the proportions of all these to each other.

Originally the purpose of the writer was to convey a knowledge of facts observed by himself in Newgate, and relating strictly to capital *punishment*; but having found that an account of the Administration of the Punishment of Death would be very imperfect without some notice of the means adopted for preventing capital crimes, as well as detecting the criminals, he has offered some statements and remarks on

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those parts of the subject; still confining himself, however, to what he observed or learned within the walls of Newgate.

Some of the descriptions of scenes occurring within the walls of Newgate will be hardly believed, by persons who see the outside of the building every day of their lives. The great Metropolitan prison is a *terra incognita* even to those by whose habitations it is surrounded. The writer expects, therefore, to be charged with exaggeration, as if he had described a far distant and unknown country. He expects this the more, because he has related facts, of which he must have doubted if he had not actually witnessed them. But here is his principal motive,—as he trusts it may prove a justification,—for publishing what he has seen. Incredible scenes of horror occur in Newgate. Is it to be desired that such evil should remain unknown? By the answer to this question the

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writer must be blamed or excused for doing what, to those who do not ask themselves the question, may seem like ministering to a vulgar appetite for horrors.

Whatever justifies telling the truth on this occasion, imposes an obligation to tell the whole truth. The whole truth is told, therefore, precisely, and fully, without any regard to the reader's supposed credulity or scepticism, and with but one purpose in view throughout—that of leaving nothing material untold on those points with which the public is least acquainted.

The purpose of the writer being rather to narrate facts than to suggest remedies for evils, he was desirous to abstain from expressing any opinion as to the expediency of abolishing the Punishment of Death; and though the impression made on his own mind against the legal taking away of life, is so strong as to prevent him from pursuing an impartial course between

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the friends and enemies of Capital Punishment, he has avoided any formal discussion of the question; being desirous only to provide data for the use of persons more accustomed to think, and far better qualified to reason, on criminal jurisprudence.

At the same time, having arrived at the conclusion, that, as to a certain class of forgeries, the universal substitution of the punishment of transportation for that of death, would probably cause an increase of crime, he has thought it expedient to take some notice of ***Transportation to the Colonies***, the punishment at present substituted for that of death in the great majority of capital cases.

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POLICE OF PREVENTION.

THE word Prevention is used here in the narrowest sense, independently of detection, prosecution and punishment, which must always be more effectual in repressing crime than any measures of mere prevention. Prevention, by itself, however, is an important auxiliary of the criminal laws; or rather might be, one ought to say, speaking in England, where a strong prejudice against preventive Police has confined legislative measures of prevention to the effects of punishment in certain cases of detection.

Bolts and bars are one of the means of prevention which individuals adopt; and from the utility of these, some idea may be formed of the importance of a well regulated preventive Police. But the best

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preventive Police could apply to only one class of crimes, namely, robberies, whether by fraud, stealth or violence. Throughout London, until the late establishment of "the New Police," there were no public precautions against robberies, unless we may so describe the great improvement in lighting the streets, which has taken place of late years. The old watchmen and street-keepers were, I do believe, absolutely useless; and I express the opinion after having conversed on the subject with a great number of experienced thieves. No better authority could be adduced. Of the great number of thieves whom I had the means of questioning respecting the old Police, not one ever mentioned it otherwise than with contempt and derision; until, indeed, the establishment of the new Police, whereupon the regular thieves, who entered Newgate about that time, spoke with affection of the old system. Since then, up to the time when I can speak of my own knowledge, a frequent subject of conversation amongst the prisoners in Newgate, was comparisons between the old and new Police, as regards the interests of

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thieves; and I need scarcely add, that the former was universally praised, and the latter mentioned in terms of strong dislike. It happened, shortly after the establishment of the new Police, that one of its officers was charged with robbery, and committed to Newgate for trial. The proceedings against this man were watched with great attention by the other inmates of the prison; and it was curious to observe their extreme anxiety for his conviction. Printed songs, of the most blackguard stamp, assuming the guilt of the police-man, were circulated through the jail and read with avidity; and when a conviction took place, there was a general expression of regret that the crime had not been more heinous than stealing a leg of mutton, and the punishment heavier than a short imprisonment. Another fact, which came under my own observation, seems worth relating.

Of the several attacks on the New Police which took place at the close of the last year, the most violent occurred near Temple Bar, on the evening of the 9th November, when it had been expected

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that the King would dine at Guildhall. For several hours a large body of the Police were posted in the Strand, close to Temple Bar, as if for the purpose of exposing them to be abused and pelted by a mob which had assembled just within the city gate and jurisdiction. Having passed through that mob several times, I am able to state confidently, that it was composed almost exclusively of thieves, many of whom I had seen before as prisoners in Newgate. Nearly all regular thieves are clever cowards. These were bent on creating so serious a disturbance as might lead to the suppression of the New Police; and I am sure that, if their courage had equalled their animosity, they would have killed many of the Policemen. They contented themselves with uttering terms of execration and throwing stones, only because their wishes were not seconded by as many as a dozen persons not thieves.

The hatred which the thieves bear to the new Police proves that the new is superior to the old system, but not that it is perfect. If it were even

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highly useful, though far from perfect, we should observe by this time a considerable diminution of crime. No diminution of crime, I believe, has taken place during the last year. If then the ordinary causes of crime have not operated with unusual force, the new Police is not preferable to the old *as a means of preventing crime.* It is hated by the thieves, because it renders the commission of crimes somewhat more dangerous, by somewhat increasing the chances of detection. Still detection, as observed before, does not belong to the duty of a Police merely preventive. The purpose of a police merely preventive is to oppose the greatest obstacles to the commission of crimes; and for this purpose, taken by itself, the new Police is hardly more efficient than the old. The commission of a robbery may be more dangerous and even more difficult in a parish watched under the new system; but unless the difficulty—the obstacles—be so much increased as to furnish a new motive for abstaining from robbery, the change is very harassing to the thieves without being useful to

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the public. The new Police do not, like the old Watchmen, participate in robberies, and they consequently oblige the thieves to take new precautions; but if those precautions are found sufficient for the object of the thieves, which is probably the case if robberies have not decreased, then the Police is insufficient for the object of the public.

Indeed it would be surprising if the New Police, taken singly as an obstacle to robberies, had produced any great decrease of crime. As a means of prevention only, its exertions are confined to the watching of property by day and night; and this is perhaps, the least important of measures of prevention, though one not to be despised, since it would not, by itself, be effectual without such a number of watchmen and amount of expense as would make the prevention a greater annoyance and burthen than the prevalence of robberies. As regards far more important measures of prevention, little or no improvement has occurred through the establishment of the New Police. I allude, first, to the existence of organized bodies of thieves, both in

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haunts, which, though concealed from the public are not unknown to the Police, and also spread over the metropolis, in the open streets, and in broad day, bearding the Police, and not liable to disturbance unless taken in the fact. Secondly, to the existence of nurseries of thieves, where children are taught, and by every conceivable inducement encouraged, to follow thieving as a trade; and thirdly, to the facilities for disposing of stolen property.

Mere watchmen of property, however numerous and diligent, could afford no check to these evils, which, next to uncertainty of punishment, are the grand promoters of crime. The legislature alone could provide an efficient check; for at present the laws are really favourable to the prevalence of the sort of crimes now in question. The seeming paradox must be explained by statements of fact.

First, as to the congregation of notorious thieves in public houses, and other haunts, and their circulation through the metropolis in broad day and by the side of the Officers of Police. Of all this the Police Magistrates are as well informed as of their

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own existence. Why then do not they break up those hardly secret haunts of robbers, and clear the streets of notorious thieves? They will answer that they are not armed with sufficient powers; and this is partly true; for the present summary jurisdiction of the magistrate as to notorious thieves must be exercised with some caution, and always with a fear of incurring personal inconvenience by bringing so vague a charge as that of general bad character. Then again, the power of the magistrate to proceed against persons who harbour thieves is most inadequate to the end proposed by the law, since the accused person throws the whole burthen of proof on the accuser, and may shelter himself in a labyrinth of expensive law proceedings, into which it is sometimes dangerous and always difficult to follow him. Still, notwithstanding the inadequacy of the laws against notorious thieves, and the harbourers of thieves, we do every now and then find the magistrate exercise such power as he possesses with facility and success. A thief being brought before a London Magistrate, on a charge which fails, the

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magistrate, who knows the charge to be true, and remembers to have seen the accused in a similar predicament often before, asks "Who knows anything of this man?" when a couple of officers step forth and swear that they know him to be a common thief. Instantly the man is committed to the treadmill for three months. So, again, when something occurs to bring to public notice the existence of a thieves' public house, the magistrate acts, and though not, it must be admitted, without much trouble, proceeds in breaking up the noxious establishment. The complaint of the magistrate as to want of power is, therefore, but partly true. What the public has to complain of, is the magistrate's want of inclination; and it is for this, especially, that our Police laws are to blame.

I venture to say that a very large proportion of the persons committed to the London prisons on charges of robbery, and discharged for want of proof, are notorious thieves; that is to say, persons against whom Police officers might swear in the words of the Act of Parliament, and who would as-

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suredly fail in any attempt to rebut the charge. Why is not the law put in force against *all* such persons, as well as against the greater number always walking the streets, whom nobody thinks of taking before a magistrate, unless caught in the fact of committing, or attempting to commit a robbery; as also against *all* publicans who are known to harbour thieves? This question can be answered truly, only by saying that the Laws of Police do not give to those charged with the execution of them, a sufficient motive for incurring the trouble which a due execution of the laws would require. In the first of the cases just mentioned, the magistrate is stirred by a momentary feeling of anger at the escape from out of his own hands of a notorious criminal, and the hint conveyed by his question is at once obeyed by his subordinates. In the other case, both the magistrate and his officers are impelled to exert themselves by the accidental publicity given to their remissness in that particular case.

But speaking generally of notorious thieves, and of those who harbour them, their undisturbed ex-

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istence produces no inconvenience to the Police, whilst the constant and vigorous pursuit of them by day and night would be exceedingly troublesome. The law, consequently, favours the thieves, since it leaves the Police with a stronger motive for letting alone the thieves than for interfering with them. Until the law shall be improved in this respect, it will be vain to hope for any great decrease of crime in the metropolis.

The importance of some effectual interference with the haunts and the free circulation of known thieves, can scarcely be overrated. If this inquiry had extended to every description of crime, I should have been able to show that of the persons turned out of Newgate at each jail delivery—that is, eight times a year—a great number are practised criminals, whose experience enables them to defeat the law by means of perjured witnesses, compromise with the prosecutor, and corrupting the witnesses for the prosecution. If the laws were efficient, all such persons would be apprehended on leaving the prison, and sent to some penitentiary as

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notorious thieves. What becomes of them? Leaving the prison, generally pennyless, they go straight to their well-known haunts, where, either by notorious thieves like themselves, who, as such, ought to be in confinement, or by publicans or others, who, as harbourers of thieves, ought to be in prison, they are supplied with a loan of money for their immediate wants, and with information as to favourable opportunities of clearing the debt by means of robbery. These are, for the most part, persons who commit capital robberies, requiring previous arrangement. Others, such as pickpockets, if they leave the prison sufficiently well dressed, walk fearlessly through the streets, laughing at the Police, and in the course of an hour or two acquire the means of passing the night in carousing and low debauchery, at public houses or other haunts of thieves. One little boy* I remember, who, though only twelve years old, was a notorious thief, on the point of leaving the prison for want of prosecution.

* As he was never capitally committed his name does not appear in the Return.

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I asked him what he intended to do. "Go to work," was his ready answer. He was committed again some months later, and finally transported for picking the pocket of a Police magistrate. When he was recommitted, I asked him what he had done on leaving the prison? He answered—and I have no doubt truly—that he had walked through the Old Bailey, Ludgate Hill, and Fleet Street, followed by two City officers who knew him, but "once through the Bar," said he, "I went to work, and got twelve handkerchiefs between St. Clement's Church and Charing Cross." This urchin was a most expert and industrious pickpocket, was known as such to the Keeper of Newgate and the Police of the City, had been previously committed to Newgate more than once, and was seen by the Police officers setting out on his predatory excursion when discharged from jail. All these facts might have been readily proved to the satisfaction of a magistrate or a jury, —yet the law did not interfere to prevent further crimes by that individual, and so save him from the

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gallows. The case is but a sample of hundreds that occur every year in London.

Three things appear to be necessary, in order to suppress the haunts of thieves and prevent the circulation of notorious thieves in the streets.

First, That the law should be altered so as to render its execution against notorious thieves and those who harbour them, less troublesome to the Police.

Secondly, That the execution of such a law of Prevention should be confided to officers of Police, *having no other occupation, and responsible for that particular service*, though under the superintendence of higher authority, so as to furnish the immediate executors of the law with a sufficient motive for doing their duty.

Thirdly, Some provision for unity of purpose and action throughout the metropolis and its suburbs; so that a person known to be a thief in Whitechapel should be equally notorious to the officers at Pimlico, and that a harbourer of thieves driven

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from Islington should not commence business in Southwark.

The last-mentioned improvement could not, it may be said, take place without abrogating the present system of separate and independent Police jurisdictions, and interfering with what are called the privileges of the City of London. This is true; but which is it that the Public requires,—separate jurisdictions, or effectual checks to crime?

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NURSERIES OF CRIME.

NEWGATE itself, as I shall have occasion to show hereafter, is the greatest *Nursery* of capital crime. London abounds with smaller nurseries of petty offences by persons of every age, from infancy to manhood. I had the opportunity of strictly examining more than a hundred thieves, between eight and fourteen years, as to the immediate cause of their becoming thieves; and in nineteen cases out of twenty it appeared, that the boy had not committed his first crime spontaneously, but had been persuaded to commence the career of thieving by persons whose business it is to practise this kind of seduction.

The most numerous class of such seducers consists of experienced thieves, both men and boys,

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who look out for boys not criminal, to whom they represent the life of a thief as abounding in pleasure. The object of these representations is to obtain instruments, with which experienced thieves may commit robberies with less danger to themselves—participators, whose ignorance of the trade subjects them to be put forward into the most dangerous situations, and to be cheated in the division of the spoil. But words are not the only means of seduction employed in such cases: food is given to the hungry, and all kinds of stimulating enjoyments are presented to others, who do not want the means of subsistence. I state what I know to be a fact, in saying, that a practised thief often spends as much as £10 in the course of a few days for the purpose of corrupting a youth, by taking him to playhouses and other shows, and allowing him to eat and drink extravagantly at pastry-cooks, fruit-shops, and public-houses. The inevitable consequence of such indulgences is the victim's discontent with his previous mode of life; and when this feeling predominates, he is considered

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ripe for receiving without alarm the suggestions of his seducer. Very often a still more effectual means of seduction is applied, viz. the precocious excitement and gratification of the sexual passion, by the aid of women in league with the thieves, and to whom is commonly entrusted the task of suggesting to the intoxicated youth, that robbery is the only means, and a safe means, of continuing to enjoy a life of riotous debauchery. This method of seduction succeeds, I believe, *invariably*. For the information of those who may think the statement overcharged, I add, that a large proportion of the boys above twelve years of age, and some even younger, committed to Newgate, have been connected with women; a fact of which there is constant proof, since these boys are every day visited by their mistresses, under the name of "sisters;" and the greater part of their conversation in the prison, which is sometimes, and might be always, overheard, turns upon their amours. In very many cases women are wholly maintained by young thieves, whom they will dress in a frill and a pina-

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fore to appear at the bar of the Old Bailey. But such boys as these, however young, are of the class of seducers, being already practised thieves. Where women are employed as seducers, they are but the instruments of practised thieves—of those whom the law designates as "notorious thieves," and with whom, notwithstanding, the Police seldom interfere, unless they be taken in the act of robbery. From this statement it will be seen, that one of the most effectual means of *preventing* robberies would be an active, watchful, and constant interference with the measures pursued by thieves for increasing the number of their own body.

Another class of seducers consists of both men and women, but principally of old women, the keepers of fruit-stalls and small cake-shops, which stalls and shops they keep but as a cloak to their real trade,—that of persuading children to become thieves, and receiving goods stolen by children. The methods of seduction pursued by these people are for the most part similar to those adopted by the class mentioned above; but they

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are distinguished from the thieves by some peculiarities. Residing always in the same spot, and apparently engaged in an honest calling, they have superior opportunities of practising on children, who, until known to them, were perfectly well disposed. Several instances came to my knowledge of boys, the sons of decent trades-people, carefully educated, apprenticed to some trade, and with every prospect of leading an industrious and honest life, who were seduced by persons of the class in question. The course of seduction is about as follows.

The child buys fruit and cakes at the stall or shop, of which the keeper takes pains to form a familiar acquaintance with him, by conversation, artful it must be called in this case, but such as is used by all good teachers in order to gain a pupil's confidence. He passes the shop one day without money, and is invited to help himself upon trust. If he yield to the first temptation, it is all over with him. Considering his previous acquaintance with the tempter, it is almost a matter of course that he yields. Once in debt, he continues to indulge him-

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self without restraint, and is soon involved far beyond his means of repayment. Where is the Police to save him? No act of robbery has been committed, and the Police therefore is absent. Probably his parents or master have impressed on him that it is wrong to run in debt. He is already criminal in his own eyes. Instead of confessing his difficulty to his friends, he thinks of them with fear. All his sensations are watched by the wretch, who now begins to talk slightingly of harsh parents and task-masters, and insinuates her own superior affection. By degrees, more or less slow according to the degree of her art and the excitability of the boy's temperament, she gets a complete mastery of his mind. At length she guides him to the first step in crime, by complaining of want of money, perhaps threatening to apply to his parents, and suggesting that he may easily repay her by taking some trifling article from his master's shop. The first robbery committed, the chances are a thousand to one that the thief will sooner or later be transported or hanged. He goes on robbing his

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master or perhaps his parents: the woman disposes of the stolen property, giving him only a moderate share of the money obtained: she introduces him to other boys, who are following the same career: he soon learns to prefer idleness and luxuries to labour and plain food; and, after a while, becoming an expert thief, deserts his original seducer, with whom he is no longer willing to share the fruits of his plunder, connects himself with a gang, probably takes a mistress, and is a confirmed robber on the high road to Botany Bay or the gallows.

This is a history, not a fable. Let the present or the late schoolmaster of Newgate be examined, and he will confirm every word of it; adding, that no quarter of London is without seducers of this class, who follow their horrid trade, (for it is a regular trade,) taking but little precaution to escape the notice of the Police, and *quite without serious interruption.* I would rest the accuracy of my statement on such an experiment as this: Let twenty boys, selected by the Newgate Schoolmaster, be from time to time discharged from prison, and every one of them shall

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straight proceed to one of these pest-houses, shall leave it with money in his pocket, and, if watched, shall be seen to pursue the sort of career which I have described. The selection should be made so that every quarter of the metropolis might be tried, from Whitechapel to Hyde Park Corner, and from Pentonville to Kennington. If one of the boys, being properly selected and so discharged, did not prove the existence, and the undisturbed existence, too, of one of these nurseries or forcing-houses of crime, my statement should be considered an exaggeration. I know the fact to be, that the greater number of the smallest boys discharged from Newgate for want of prosecution or evidence, or after undergoing a sentence of whipping, do instantly proceed to places of this description, as to their home; and at one time I knew the names and addresses of more than twenty persons who lived by this villainous trade.

Where is the Police? I have asked myself the question a thousand times. Not the actual Police Officers but the Law of Police is to blame. To say

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that a law might not be framed, which, if duly executed, would root out these pests of society, appears nonsensical, even though we admit that it is better ten guilty should escape than one innocent person be punished. In this case there need be no very severe punishment. *Disturbance* is the point to aim at. Is it better that scores of innocent children should be every year seduced into the crime, than that occasionally an innocent old woman should be put to inconvenience? Besides, the offences of *prompting to robbery* and *harbouring of thieves* might be defined pretty clearly, and the question of guilt left to the judge and jury. Satisfactory evidence of the offence would be more easily procured in those cases of multiplied crime than in many capital cases where the crime is single. But such a law would be of little avail, without measures for giving to those charged with its execution the strongest motive for a diligent performance of their duty. At present, the Police of prevention, if we have one at all, is without any such motive.

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Another class of nurseries of crime, not indeed to be found in every quarter of London, but confined to certain districts, such as St. Giles's, the low parts of Westminster, and both sides of Whitechapel, are lodging-houses, kept generally by receivers of stolen goods, and resorted to by none but thieves or those who are on the point of becoming thieves. Houses of this description often contain fifty beds. Into some of these, boys only are admitted; the purpose of such exclusiveness being, on the part of the boys, to preserve their independence, that is, to escape the controul of persons stronger than themselves,—(they are equal and often superior to grown thieves in skill, presence of mind, and knowledge of their business,)—and on the part of the lodging-house keepers, to prevent the men from robbing the boys, so that they, the lodging-house keepers, may reap as much as possible of the boys plunder. Women, however, are not excluded. It would be more correct to say that girls of all ages above ten (for it is seldom that the female companion of thieves lives

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to be a woman,) are admitted, not on their own account as independent lodgers, but as the acknowledged mistresses of the boys who introduce them. The scenes of profligacy that occur in these dens are indescribable, and would be incredible if described. Passing them over with no other remark, it must be stated, that one of these dens becomes the *new home* of a boy who is on the point of turning thief. Here, if he have any remains of honesty or wholesome fear, all impressions of that kind are quickly and for ever effaced. Here, too, receivers of stolen goods are admitted, who upbraid the boys if they have been unsuccessful, and show them handfuls of gold, as an inducement to greater daring the next day. At one time, early in 1830, there were half-a-dozen boys in the school-yard of Newgate, who had lodged together in one of these houses, and during their confinement a man, who had not been suspected before, was convicted of receiving stolen goods. This man happened to be placed in the yard next to that of the school; and I heard many conversations between him and the

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boys, and afterwards, when he had left the prison, frequently questioned the boys about him. Altogether I learned, that for several years past he had been in the constant habit of visiting a coffee-shop attached to a boy-thieves' lodging-house near Houndsditch, always carrying with him a quantity of gold, which he used to show to the boys, not merely urging them to earn some of it, by bringing to him stolen goods at a more secret place, but suggesting to them all sorts of robberies, the plan of which it was part of his business to concoct, whilst apparently occupied with some honest calling. He was, as I understood, not unlikely to be pardoned, in consequence of the interference on his behalf of a nobleman with whom his brother lived as servant. My attention was first directed to him by seeing him give money to the boys; and I soon found that these presents were bribes for their silence. He passed for a religious man with the Keeper and Chaplain, always attended chapel with an air of great devotion, and generally snatched up a Bible when any officer of the prison was likely to

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observe him. His sentence was, I think, seven years' transportation; so that, as transports of seven years are generally kept in the hulks for not more than three or four years, he will probably be turned loose and resume his business some time in 1834.

This man's case has been mentioned only with reference to those nurseries of crime—boy-thieves' lodging-houses; but he might have been classed with

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RECEIVERS OF STOLEN GOODS,

Concerning whom I purpose to offer a few remarks. Until lately these, far worse than thieves, had little to fear from the law. A slight improvement of the law was made by a bill lately introduced by Mr. Peel, which enacted that any one found in the possession of stolen goods, within a fixed period of the time when the goods were stolen, and unable to account for such possession, should be considered as the thief, and liable to the punishment of stealing to the amount of the value of the goods. But that this provision has done little towards diminishing one of the greatest temptations to robbery—the facility of converting stolen goods into money—is proved by this unquestionable fact, that *no thief, however young or inexperienced, finds the least difficulty in disposing of stolen goods.*

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This law has the same effect on the receivers as the establishment of the New Police on the thieves. It renders the receiver's trade somewhat more difficult, and obliges him to take new precautions. It harasses him, therefore, as the New Police harass the thieves; but in neither case do the public gain any thing, since thieving does not decrease, and receivers are as numerous as ever. The utility of the new law can be reasonably measured only by the degree in which it checks crime. So viewed, the new law is absolutely useless. No doubt a greater number of receivers are yearly convicted, and either for ever, or for a time, removed from the scene; but the trade of dealing in stolen goods is still so gainful, and so easy, that every vacancy is instantly filled, and the whole number of receivers remains as before. Manifestly the public gains nothing by the more rapid change in the persons of the receivers; nor will any useful result be produced until a well devised law, and well directed Police, shall root out the receivers more rapidly than the gains and facilities of the pursuit

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bring new receivers into the field. At present the profits of receiving stolen goods are immeasurably greater, whilst the trouble and danger are considerably less, than in the case of many unwholesome but honest trades, in which there is no want of competition. By forcibly diminishing the number of receivers we should increase the profits of those who remained, and this would compensate for the greater trouble and danger resulting from an improved law and an improved Police. But diminution of numbers, if carried beyond a certain point, would be productive of the greatest good, by increasing the difficulties of the thieves in the disposal of stolen goods; and, moreover, the trouble and danger of receiving might be so augmented as to counterweigh any possible increase of profits arising from a decrease in the number of traders. To this point, therefore, the attention of the Government ought to be directed—not to a mere diminution of the number of receivers, but to the greatest possible diminution; constantly bearing in mind, that what only removes receivers of stolen goods from the

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field, leaving behind the same degree of temptation for others to take their place, is of no use whatsoever to the public, and that so long as we shall grant to thieves a perfect facility in the disposal of stolen goods, all other measures for the repression of thieving must be ineffectual.

The present system of Police, with the present law, is quite inadequate to any really useful interference with the receivers of stolen goods. Whenever a good system of Police shall be established for the execution of good laws against notorious thieves, nurseries of crime and receivers of stolen goods, I venture to suggest that one officer of such Police ought to reside constantly in each of the London prisons, and especially in Newgate, for the purpose of obtaining information on all these points, and exclusively charged with that service. Nothing would create such dismay amongst the criminals whom it is so desirable to root out of society; and I speak from my own experience of the quantity of information that would be obtained in this way, when I express a belief that such a measure of

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espionnage might be made the means of diminishing crime to an extent, which I abstain from estimating, for fear of startling those who have never reflected on the importance of measures of prevention.

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DETECTION

May in almost every case be said to rest principally with the individual who has been injured. Occasionally a magistrate and his subordinates actively bestir themselves to discover a criminal; but this exception to the general rule is rare indeed, seldom occurring but in cases of great enormity, to which public attention has been directed. It would not be very difficult for the Government to obtain an account of the crimes committed in the metropolis during some short period; and if the statement were compared with the number of criminals detected in the same period, the public would be astonished to learn how large a proportion of crimes are never brought home to the guilty. I seldom missed an opportunity of making inquires on this point of the most experienced and intelligent thieves, who had no motive for concealing the

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truth from me. The greater part of these prisoners admitted, that, for one robbery which had brought them before a magistrate, they had committed ten without the least inconvenience; whilst the more calculating estimated the average proportion of escapes to detections at fifty to one. This estimate ought, of course, on account of its looseness, to be received with doubt.

Some further notice will be taken by-and-bye of the numerous chances of escape from punishment which the laws of England hold out, in point of fact, to encourage crime. Here I would only remark, that without the certainty of detection as a necessary step to the certainty of punishment, there can be no effectual check to crime; that in London especially, where the Police is without unity of purpose and action, as well as without any strong motive for exertion to detect criminals, this great check to crime is generally neglected by the authorities; that the expense and trouble which an individual must incur in urging the authorities to act as his instruments in the detection of a criminal,

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are, in many cases, a stronger inducement to deter from pursuing the criminal than any countervailing motive of public spirit; and that the only effectual remedy of this crying defect of the laws, would be the appointment of a body of officers specially charged with *the detection of criminals*, and responsible for the due performance of that particular service, throughout the metropolis and its suburbs.

Here, again, it may be said, that the existing separate and independent Police jurisdictions forbid such an arrangement; and I again acknowledge the truth of the observation, again asking, however, which is most to be desired—the existence of such mischievous partitions of the Police power, or so effectual a check to crimes as the best measures of prevention?

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TABLES.

THE following Tables have been drawn up from a return to the House of Commons, entitled as follows:—"An Account of the COMMITMENT to Prison of persons *charged* with CAPITAL CRIMES, and of the PUNISHMENT of DEATH, in the County of *Middlesex* and the City of *London*, from the 1st May, 1827, to the 30th of April, 1830, in the Order of the Dates of Commitment."

"Ordered, by the House of Commons, to be printed, 3d February, 1831."

The return gives the name of every person committed; and, generally, when a case is cited in the following pages, the name of the prisoner is mentioned with reference to the page in which it occurs.

These Tables will be found to contain a great deal of curious information, both as to capital crimes

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generally, and as to each species of crime separately. It appears unnecessary to direct the reader's attention to each point on which information is conveyed, further than has been done in the Introduction. Every number in the Tables is a statement of fact; and to have recited the facts would have been to repeat the Tables in words. A single point, however, I would just refer to, as a specimen of the sort of statements which the Tables convey.

Table No. 9 relates to the two crimes of "cutting and maiming" and "returning from transportation." The proportion of persons *executed* to those *convicted* of the former crime is 1 in $3\frac{1}{2}$, much exceeding the average proportion of executions to capital convictions generally, which, by Table No. 1, appears to be 1 in $8\frac{1}{3}$. The crime, therefore, of cutting and maiming is more frequently punished with death than capital crimes generally. Let us observe the effect of this difference, on the convictions. As to crimes generally, Table No. 1 shows the proportion of *convictions* to *commitments* to be 1 in $2\frac{156}{451}$. The same proportion as to cutting and

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maiming is 1 in nearly 4. But now look, in Table 9, at the results of returning from transportation. Here none are executed; and it is notorious to prosecutors, witnesses, judge and jury —those, in short, on whom depends the question of conviction—that no one is ever executed for this crime. What then is the proportion of convictions to commitments as to this crime?—*equal.* All the persons committed are convicted. The proof of this crime is more difficult than in most other cases; depending on identification, which the artful class of persons who commit the crime take great pains to prevent, by many disguises, and by a truly wonderful simulation of innocence. To what are we to attribute the facility of conviction in this case, wherein none are executed, in comparison with the case of cutting and maiming, wherein so many are executed? To the difference as to the *punishment*—to the fact that one case involves the punishment of death, and that the other does not.

The return to the House of Commons does not

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specify the number of capital *sentences*. Nor was this necessary, as sentence of death almost invariably follows capital conviction. The sentences for minor offences vary from transportation for life, through all periods of imprisonment, not exceeding two years, to a nominal fine. They have been purposely omitted, because not belonging to the subject of these pages.

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No. 1.

Ages.	Males Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Convicted of Minor Offence.	Convicted of Capital Offence.	Sentence Remitted.	Ordered for Execution.	Executed.	Females Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	Total.
under 16	41	1	2	7	18	13	13	..	..	1	..	..	1	..	..	..	..	..	42
16	43	..	2	7	12	22	22	..	..	4	..	1	..	2	1	1	..	..	47
17	47	..	4	18	7	18	17	1	1	10	..	..	2	3	5	5	..	..	57
18	55	1	4	13	11	26	23	3	3	10	..	2	2	4	2	2	..	..	65
19	75	..	4	20	17	34	31	3	3	15	..	3	6	5	1	1	..	..	90
20	55	2	2	10	8	33	32	1	1	9	..	1	5	..	3	3	..	..	64
21	70	1	6	22	9	32	27	5	5	10	..	1	6	3	..	..	..	..	80
22	63	1	1	19	7	35	32	3	3	12	..	1	4	2	5	5	..	..	75
23	55	..	2	13	9	31	26	7	5	11	..	3	3	2	3	3	..	..	66
24	40	..	1	11	5	23	19	4	4	7	..	1	3	2	1	1	..	..	47
25	50	1	2	19	8	20	18	3	2	8	..	1	3	2	2	2	..	..	58
26	32	..	2	14	3	13	10	3	3	7	..	..	2	3	2	2	..	..	39
above 26	265	4	14	96	43	108	86	26	22	63	2	6	14	23	18	15	3	3	328
	891	11	46	269	157	408	356	59	52	167	2	20	51	51	43	40	3	3	1058

The youngest person committed was a boy 8 years of age, charged with stealing in a dwelling-house, and convicted of the minor offence.

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No. 2.

STEALING IN A DWELLING-HOUSE.

Age.	Males Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	Females Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	Total.
under 16	11	1	..	1	7	2	2	..	..	1	..	..	1	..	..	..	..	..	12
16	10	..	..	3	1	6	6	..	..	..	..	..	..	..	..	..	..	..	10
17	12	..	2	3	..	7	7	..	..	4	..	..	1	2	2	2	..	..	16
18	16	..	2	2	5	7	7	..	..	5	..	1	..	3	1	1	..	..	21
19	24	..	3	5	9	7	7	..	..	9	..	1	2	5	1	1	..	..	33
20	17	..	..	4	4	9	9	..	..	..	..	..	..	..	..	..	..	..	17
21	10	..	..	2	1	7	7	..	..	1	..	..	..	1	..	..	..	..	11
22	20	1	1	..	5	13	13	..	..	5	..	1	2	1	1	1	..	..	25
23	13	..	..	1	3	9	6	3	3	2	..	..	..	2	..	..	..	..	14
24	4	..	1	..	2	1	1	..	..	4	..	..	1	2	1	1	..	..	8
25	11	..	..	2	5	4	4	..	..	..	..	..	..	..	..	..	..	..	11
26	7	..	1	..	3	3	3	..	..	1	..	..	..	1	..	..	..	..	8
above 26	55	..	1	15	20	19	19	..	..	20	..	..	1	12	7	7	..	..	75
	210	2	11	38	65	94	91	3	3	52	..	3	8	28	13	13	..	..	262

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No. 3.

HIGHWAY ROBBERY.

Age.	Males Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	Females Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	Total.
under 16	5	..	1	2	1	1	1	..	..	..	..	..	..	..	..	..	..	..	5
16	8	..	..	..	2	6	6	..	..	1	..	1	..	..	..	..	..	..	9
17	9	..	1	1	4	3	3	..	..	4	..	..	1	1	2	2	..	..	13
18	18	1	..	6	4	7	4	3	3	4	..	1	2	1	..	..	..	..	22
19	19	..	..	8	2	9	8	1	1	5	..	2	3	..	..	..	..	..	24
20	10	..	2	4	2	2	2	..	..	6	..	1	2	..	3	3	..	..	16
21	23	1	4	11	1	6	2	4	4	5	..	1	3	1	..	..	..	..	28
22	14	..	..	9	..	5	5	..	..	4	..	..	1	1	2	2	..	..	18
23	17	..	1	6	3	7	6	3	1	5	..	2	1	..	2	2	..	..	22
24	9	..	..	4	2	3	3	..	..	1	..	1	..	..	..	..	..	..	10
25	6	..	1	1	1	3	2	2	1	5	..	1	2	1	1	1	..	..	11
26	4	..	..	2	..	2	2	..	..	4	..	..	1	1	2	2	..	..	8
above 26	28	..	3	12	3	1	9	2	1	13	1	3	4	3	2	2	..	..	41
	170	2	13	66	25	60	53	15	11	57	1	13	20	9	14	14	..	..	227

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No. 4.

HOUSEBREAKING.

Age.	Males Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	Females Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	Total.
under 16	20	..	1	2	10	7	7	..	..	..	..	..	..	..	..	..	..	..	20
16	18	..	1	4	7	6	6	..	..	2	..	..	..	2	..	..	..	..	20
17	15	..	1	7	1	6	5	1	1	1	..	..	..	..	1	1	..	..	16
18	5	..	..	..	1	4	4	..	..	1	..	..	..	..	1	1	..	..	6
19	17	..	1	3	5	8	7	1	1	..	..	..	..	..	..	..	..	..	17
20	12	..	..	1	2	9	8	1	1	3	..	..	3	..	..	..	..	..	15
21	17	..	1	2	4	10	9	1	1	2	..	..	2	..	..	..	..	..	19
22	9	..	..	3	2	4	4	..	..	1	..	..	1	..	..	..	..	..	10
23	11	..	1	1	3	6	6	..	..	2	..	..	1	..	1	1	..	..	13
24	10	..	..	4	1	5	4	1	1	..	..	..	..	..	..	..	..	..	10
25	4	..	..	1	1	2	2	..	..	2	..	..	..	1	1	1	..	..	6
26	10	..	..	8	..	2	1	1	1	1	..	..	..	1	..	..	..	..	11
above 26	48	2	1	20	10	15	14	1	1	11	..	1	2	6	2	2	..	..	59
	196	2	7	56	47	84	77	7	7	26	..	1	9	10	6	6	..	..	222

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No. 5.

BURGLARY.

Age.	Males Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	Females Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	Total.
under 16	2	..	..	..	..	2	2	..	..	..	..	..	..	..	..	..	..	..	2
16	5	..	..	..	2	3	3	..	..	..	..	..	..	..	..	..	..	..	5
17	7	..	..	3	2	2	2	..	..	..	..	..	..	..	..	..	..	..	7
18	10	..	2	2	1	5	5	..	..	..	..	..	..	..	..	..	..	..	10
19	9	..	..	1	1	7	7	..	..	1	..	..	1	..	..	..	..	..	10
20	6	..	..	..	..	6	6	..	..	..	..	..	..	..	..	..	..	..	6
21	12	..	..	5	3	4	4	..	..	1	..	..	1	..	..	..	..	..	13
22	13	..	..	4	..	9	6	3	3	1	..	..	..	..	1	1	..	..	14
23	7	..	..	1	..	6	6	..	..	1	..	1	..	..	..	..	..	..	8
24	8	..	..	1	..	7	6	1	1	..	..	..	..	..	..	..	..	..	8
25	8	1	..	4	..	3	3	..	..	..	..	..	..	..	..	..	..	..	8
26	1	..	..	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1
above 26	25	1	..	9	4	11	6	5	5	3	..	1	2	..	..	..	..	..	28
	113	2	2	31	13	65	56	9	9	7	..	2	4	..	1	1	..	..	120

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No. 6.

Age.	HORSE-STEALING. Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	SHEEP-STEALING. Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	Total.
under 16	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
16	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
17	..	..	..	..	..	..	..	..	..	1	..	..	1	..	..	..	..	..	1
18	1	..	..	..	..	1	1	..	..	..	..	..	..	..	..	..	..	..	1
19	3	..	..	1	..	2	2	..	..	..	..	..	..	..	..	..	..	..	3
20	1	..	..	..	..	1	1	..	..	1	..	..	..	..	1	1	..	..	2
21	3	..	..	1	..	2	2	..	..	2	..	..	..	..	2	2	..	..	5
22	3	..	..	2	..	1	1	..	..	..	..	..	..	..	..	..	..	..	3
23	3	..	..	1	..	2	2	..	..	..	..	..	..	..	..	..	..	..	3
24	2	..	..	..	..	2	2	..	..	..	..	..	..	..	..	..	..	..	2
25	5	..	1	1	..	3	3	..	..	4	..	..	2	..	2	2	..	..	9
26	1	..	..	1	..	..	..	..	..	1	..	..	..	..	1	1	..	..	2
above 26	19	..	2	6	1	10	6	4	4	7	..	..	4	..	3	2	1	1	26
	41	..	3	13	1	24	20	4	4	16	..	..	7	..	9	8	1	1	57

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No. 7.

Age.	FORGERY. Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	UTTERING FORGED NOTES. Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	Total.
under 16	2	..	..	1	..	1	1	..	..	..	..	..	..	..	..	..	..	..	2
16	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
17	1	..	..	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1
18	2	..	..	..	..	2	2	..	..	..	..	..	..	..	..	..	..	..	2
19	2	..	..	1	..	1	..	1	1	..	..	..	..	..	..	..	..	..	2
20	5	2	..	..	..	3	3	..	..	..	..	..	..	..	..	..	..	..	5
21	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
22	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
23	..	..	..	..	..	..	..	..	..	1	..	..	1	..	..	..	..	..	1
24	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1	..	1	1	1
25	2	..	..	..	1	1	..	1	1	..	..	..	..	..	..	..	..	..	2
26	3	..	..	..	..	3	2	1	1	..	..	..	..	..	..	..	..	..	3
above 26	18	..	2	7	..	9	6	5	3	2	..	..	..	..	*2	..	*2	1	20
	35	2	2	10	1	20	14	8	6	4	..	..	1	..	3	..	3	2	39

* One of these took poison and died.

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No. 8.

MURDER.

Age.	Males Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	Females Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	Total.
under 16	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
16	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
17	..	..	..	..	..	..	..	..	..	1	..	..	..	1	..	..	..	..	1
18	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
19	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
20	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
21	1	..	..	1	..	..	..	..	..	1	..	..	..	1	..	..	..	..	2
22	1	..	..	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1
23	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
24	2	..	..	1	..	1	..	1	1	1	..	..	1	..	..	..	..	..	3
25	1	..	..	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1
26	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
above 26	10	..	1	4	4	1	1	..	..	8	..	1	2	2	3	..	3	3	18
	15	..	1	8	4	2	1	1	1	11	..	1	3	4	3	..	3	3	26

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No. 9.

Age.	CUTTING AND MAIMING.					RETURNING FROM TRANSPORTATION.					
	Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	Total.
under 16	1	..	..	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1
16	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
17	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
18	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
19	1	..	..	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1
20	1	..	..	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1
21	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1	1	..	..	1
22	1	..	..	..	..	1	1	..	..	1	..	..	..	..	1	1	..	..	2
23	1	..	..	*1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1
24	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
25	1	..	..	1	..	..	..	..	..	1	..	..	..	..	1	1	..	..	2
26	1	..	..	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1
above 26	20	..	2	12*	..	6	4	2	2	5	..	..	..	..	5	5	..	..	25
	27	..	2	18	..	7	5	2	2	8	..	..	..	..	8	8	..	..	35

* Two of the acquitted persons were females.

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No. 10.

COINING.

Age.	Males Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	Females Committed.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	Total.
under 16	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
16	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1	1	..	..	1
17	2	..	..	2	..	..	..	..	..	..	..	..	..	..	..	..	..	..	2
18	1	..	..	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1
19	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
20	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
21	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
22	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1	1	..	..	1
23	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
24	1	..	..	1	..	..	..	..	..	1	..	..	1	..	..	..	..	..	2
25	2	..	..	2	..	..	..	..	..	1	..	..	1	..	..	..	..	..	3
26 above 26	..	..	..	..	..	..	..	..	..	1	..	..	1	..	..	..	..	..	1
	5	..	..	1	..	4	..	4	4	5	1	..	1	..	3	3	..	..	10
	11	..	..	7	..	4	..	4	4	10	1	..	4	..	5	5	..	..	21

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No. 11.

Uttering Counterfeit Coin	4
Arson	5
Smuggling	11
Maliciously Shooting at	3
Cattle Stealing	5
Rape	18
Stealing Letter while employed at the Post Office	2
	48

Age.	Not Prosecuted.	Bill Ignored.	Acquitted.	Minor Offence.	Capital Offence.	Remitted.	Ordered.	Executed.	Total Commitments.
under 16	..	..	..	..	..	..	..	..	..
16	..	1	..	..	1	1	..	..	2
17	..	..	..	..	..	..	..	..	..
18	..	..	2	..	..	..	..	..	2
19	..	..	..	..	..	..	..	..	..
20	..	..	..	..	2	2	..	..	2
21	..	1	..	..	..	..	..	..	1
22	..	..	..	..	1	1	..	..	1
23	..	..	1	..	1	..	1	1	2
24	..	..	..	..	3	3	..	..	3
25	..	..	4	..	1	1	..	..	5
26	..	1	1	..	2	1	1	1	4
above 26	1	2	8	1	14*	14*	..	..	26
	1	5	16	1	25	23	2	2	48

* One of the persons capitally convicted, and whose sentences were remitted, was a female, 44 years of age, for uttering counterfeit coin.

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PROSECUTION IN CAPITAL CASES.

By the Table No. 1. it will be seen, that of 1058 persons committed for trial on capital charges, only 13 were discharged for want of prosecution. This fact, viewed by itself, would lead to the conclusion, that the motive which impels individuals to prosecute offenders is sufficiently powerful for the ends of criminal justice. But when the fact is regarded in connection with many others, we shall arrive at a very different conclusion.

First. Of the 1058 persons committed for trial, 66 were discharged without trial, in consequence of the bills against them being ignored by grand juries, 320 were wholly acquitted, and 208 were convicted of some minor offence, that is, were not convicted of the charge on which they had been

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committed. The whole number of persons committed on the capital charge, but not capitally convicted, amounts to 607, or considerably more than half the number of those, whom the magistrate saw good reason for sending to trial. The question remains, how many of these persons escaped capital conviction through the neglect or connivance of prosecutors? Facts shall give the answer.

Not one person in a thousand committed for trial, whether on the capital or some minor charge, acknowledges his guilt before trial. They are all innocent; so they solemnly declare. But the truth is, that they are nearly all guilty; or at any rate the exceptions are extremely rare, not amounting, I am inclined to think, to one in a hundred. I make this assertion after having been deceived in numerous cases, which I was led to examine, under an idea that prisoners were suffering from false accusations; and I call, as a witness to confirm me, Mr. Barrett, the late Deputy Keeper of Newgate, at present Keeper of White Cross Street Debtors' Prison, a gentleman of cultivated mind, and great humanity,

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who was never sparing of exertion unconnected with his duties, where the least prospect of saving an innocent person was brought to his notice. To the magistrates, therefore, of London and Middlesex must be awarded the praise of exercising extreme caution in the commitment for trial of persons capitally arrayed before them. If they rarely send an innocent person to trial, the escape from capital conviction of more than half the persons sent to be tried on capital charges, must be owing to some defects in the subsequent proceedings. It will be easy to specify these defects.

Every criminal lawyer knows, that the evidence which satisfies a magistrate, will, generally, satisfy a grand jury. On this ground, therefore, one might assume that in the 66 cases of bills ignored, part of the evidence which had appeared before the magistrate was kept from the grand jury. But the assumption rests on surer foundation than the caution of magistrates, and the readiness of grand juries to find bills on *exparte* evidence. The first, the constant thought and occupation of a prisoner

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on being committed for trial, is to devise means of tampering with his prosecutor, and the witnesses against him. If he have money, and his prosecutor, or the witnesses, be open to bribery, money is not spared. But the most common mode in which prosecutors are bribed, is by the return of property taken from them by violence, stealth, or forgery; and I may add, only repeating a statement oftentimes made to me by persons concerned in such transactions, that, in some cases, where stolen goods have been wholly, or partially, out of the prisoner's reach, other stolen goods, over which he has controul, supply their place, and are received without too careful an examination, by persons who would have rejected money with scorn. It may seem incredible that tender consciences should bear so gross a salve; but the shades of dishonesty, as of every human disposition, are various like the faces of men.

Another mode of influencing prosecutors, and witnesses, in capital cases, is by appealing to the best feelings of human nature. Many an honest man, who, in the first heat of anger at being

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robbed, by violence, stealth, or forgery, hurries before a magistrate, and by his straight-forward evidence sends the criminal for trial, and who would reject, with indignation, any proposal having the shadow of bribery, is found accessible by the tears of a distracted wife and wailing children. When mercy is claimed at his hands, he says, "No, I will not stop the course of justice;" but reminded, that by lending himself to the due course of law, the wife who addresses him will be made a widow, and the children orphans, he hesitates, and after a struggle between his sense of duty and his feelings of compassion, he determines not to be instrumental in taking the prisoner's life. If he be a religious man, you are almost sure of him; for, in that case, though he may have a stronger sense of the wickedness of perjury, he is impelled to conceal a part of the truth, by an unconquerable repugnance to having any share in what, upon reflection, he considers a judicial murder. I have taken a part in endeavouring to save the lives of many persons charged with forgery: and being now under the

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obligation myself to speak the whole truth, I solemnly declare that, in such cases, the first consideration of those who propose to save a life by tampering with a prosecutor or witness, is *the religious sentiments of the person to be influenced.* General character comes next. If he, on whose word depends the life or death of the prisoner, be a man of honour, and benevolence, just, humane, and generous, though not a religious man, the hope of inducing him to perjure himself is not forlorn—but if, in addition, you know him to hold decided religious opinions, of what Christian sect is quite indifferent, so confidently may you expect to turn him against the law. If, on the contrary, he be reputed dishonest, selfish, hard-hearted, mean, and, above all, not a professor, or not sincere in his professions of religion; then the endeavour to set him against the law, by an appeal to his humanity, may as well be spared. In such a case your only dependence is on the weakness of the judge or the jury;—a matter to be considered presently.

But it may be said, if these motives are so power-

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ful in deterring prosecutors and witnesses from pursuing the criminal, how are we to account for the small number of escapes through total want of prosecution? Explain how so many true bills are found by the Grand Jury.

The explanation is easy. First, the bribed prosecutor or witness, is generally desirous to avoid the forfeiture of his recognizance, and for that purpose goes through the form of his part in the prosecution, taking care to shape his evidence in favour of the accused. Secondly, the prosecutor or witness, whose humanity, or sense of religion, impels him to cheat the law of its prey, is actuated by a motive which would be condemned by society; or, rather, an honourable motive leads him to do that which is itself a crime, and which society would reprobate. He is ashamed, if not afraid, to avow his noble weakness: and he too, consequently, bears his part formally in the prosecution; preferring the crime of perjury to the ill-will of society. Thirdly, considerable allowance must be made for this, that the witness who desires to swear falsely to save a

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life, may have no opportunity of doing so, *without palpably exposing his intention* until he be subjected to cross-examination. Lastly, it often happens that the prisoner's friends do not exert themselves vigourously with the prosecutor and witnesses, until a true bill has been found, and the nearer prospect of conviction and execution comes to disappoint the idle hope which they had indulged of the bill being thrown out without their interference.

There are legislators who may sneer at the endeavour to account for a plain fact, as they would call it, by reference to such complicated motives of human conduct; but it is to such law-makers as these—" practical men," they call themselves—whose ignorance of human nature disqualifies them from legislating rationally, that we owe the continuance of a barbarous, inefficient system of criminal law, and the prevalence of crime. The influence of the punishment of Death, in rendering the law a nullity as to a great number of cases, is one of the first encouragements of crime. A rational le-

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gislature would ascertain precisely the extent to which this influence operates; and on the data so obtained would either remove the original evil cause, or provide some check to its injurious operation.

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WEAKNESS OF JUDGE AND JURY.

THE escape of so many capital offenders from capital conviction, must not be wholly attributed to the corruption or weakness of prosecutors and witnesses. Judges and juries are men, like prosecutors and witnesses, and though not, in this case, open to corruption, are not gifted with any peculiar hardness of heart. They constantly nullify the law, by saving from capital conviction, one, whom they believe to be capitally guilty. This occurs so frequently, and is so fully brought to the knowledge of the public, in the reports of trials at every Old Bailey Sessions, and every country Assize, that I am unwilling to dwell on it at any length. But the following facts may be worth stating.

Amongst the prisoners in Newgate, charged with

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capital, as with other offences, it is a common practice to get up mock trials, in which the men take the respective parts of judge, jury, witnesses, and prisoner at the bar. On these occasions the prisoners show a remarkable knowledge of the temper of judges and juries, being in the habit of acquitting many prisoners whom they know to be guilty of capital offences, and of convicting of some minor offence in a great number of such cases. At one time the mock judge will tell the mock jury, that, though the property charged to be stolen has been declared by the mock witness to be worth £10., such property is only worth £4 : 19 : 6., and that they must return a verdict accordingly, in order to save the mock prisoner's life. At other times they make the judge strict in the exercise of his duty, and the jury bent upon giving a false verdict, notwithstanding the judge's admonitions to the contrary; and on these occasions the best managers of a theatre might be envious of the correctness with which the thieves imitate those so common squabbles between judge and jury. The effect of such scenes in producing

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contempt of the law, I leave to the reader's imagination; adding, however, that the audience is promiscuously composed of hardened criminals, beginners in crime, persons guilty but once and of inconsiderable offences, and boys, who, being above fourteen years of age, are considered too old for the school ward. Who will deny that Newgate is a great nursery of crime?

The following fact will illustrate the evil influence of the punishment of death on the minds of juries. Shortly after the execution of *Joseph Hunton** for forgery, in 1828, a man named Hunter† was committed to Newgate, charged with forgery. A friend of mine was acquainted with the principal witness against the accused, and, merely from being so led to think on the subject, became desirous to save the prisoner's life. He consulted me as to the best course of proceeding for that purpose. I advised that the prisoner's defence should be entrusted to Mr. Harmer, whose experience and skill as an attorney in criminal matters are well known.

* Return, p. 18.

† Through some error, his name is not in the Return.

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This was done; but, on communicating with the prisoner's relations, my friend discovered that he was a bad fellow, and had committed several previous forgeries. There was not the least doubt of his guilt in this case. His friends dreaded, that, if he were acquitted in this case, he would commit other forgeries, and come to be hanged. It was therefore suggested, that the better course would be, to let him be capitally convicted, but on such evidence as would surely induce the King in Council to remit the sentence, so that he might be transported for life. The principal witness against him was induced to frame his evidence for that purpose; and the prisoner, aware of his own bad propensity, entirely concurred in the arrangement. The prisoner, therefore, his friends, his attorney, and the principal witness against him, went into court, bent on procuring a verdict of guilty. The evidence was conclusive; but the jury, without hesitation, returned a verdict of not guilty; and the prisoner was immediately discharged, to the great disappointment of every one interested on his behalf.

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There is not the least doubt, that this acquittal was owing to the impression recently made on the minds of the jurymen by the execution of Hunton and others.

At the provincial assize, where the judge determines which capital convicts shall be executed, and in London and Middlesex, where that question is left to the King in Council, it frequently happens, that a man is put to death for the crimes of others. That is, being convicted of burglary or sheep-stealing, he is executed, *because* the crime of burglary or sheep-stealing prevails at the time, and because, as the judge of assize gravely states for publication in the newspapers, " an example is necessary." Now, the prevalence of the crime operates just the other way, as to the *conviction* of capital offenders, in the metropolis. Whatever his capital offence, (except murder,) a prisoner for trial considers his chance of being let off by the jury, to be in proportion to the number of persons lately executed for the crime for which he is to be tried. Suppose the crime to be forgery :—if no forger have been executed for some

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time, the jury may probably convict; if many forgers have been lately executed, there is a fair prospect that the jury will perjure themselves, and return a verdict contrary to the evidence. I am satisfied, that calculations of this sort are made by nearly every capital offender (not a murderer) who enters Newgate, and made, too, on rational grounds; for, though the case mentioned above be a strong one, perjury of the same kind, and from the same motive, is committed by juries *at every Old Bailey session;* and not only is the fact known to those most interested in it—the community of regular and would-be criminals—but they know also, that the judges, the counsel, the police magistrates, those who will compose future juries, the legislature, and in a word, the public at large, are fully aware of it.

Returning to the prosecution, I cannot help mentioning something in connection with a matter oftentimes pressed on public notice, namely, the existence of a society in London for the protection of bankers against "utterers with a view to defraud." The members of this society feel that, as individuals, they would hesitate to protect themselves by pursu-

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ing forgers to the gallows. They therefore become a corporate body, and employ a ruthless attorney, so that the bloody work may be done collectively and by deputy. In cases of prosecution by this society, there is no prosecutor to tamper with, by appealing either to a sordid or to a noble weakness. The prisoner, therefore, so prosecuted, never thinks of endeavouring to divert the prosecution; his only trust is in the judge and jury, but especially the latter. Now for a fact. It is, that prisoners prosecuted by the society in question, place more trust in the weakness of the jury, than prisoners not deprived of the chance of escape afforded by an individual prosecutor's weakness. They know that the common juries of London have a prejudice against the society, and particularly against its executive officer, whose name, of course, is often publicly connected with hangings in front of Newgate. And the notion of prisoners in this respect is, I believe, well founded; for several cases occurred to which my attention was called, and in which prisoners, prosecuted by this society, were acquitted, though

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their guilt was as plain as their presence at the bar. In one of these cases, the prisoner himself told me, that his only chance of escape was in the dislike of the jury to the society. His defence consisted of a tale incredible by itself, as indeed the case against him was so plain as to be met only by the most improbable explanation of it. The jury, without hesitation, returned a verdict of not guilty.

Next to the substitution of some milder punishment for that of death, the most useful improvement of our criminal laws would be the appointment of a Public Prosecutor. Indeed, when one reflects that the only object of punishment is the repression of crime; that, therefore, penalties ought to be so measured as to hold out in each case a stronger motive for abstaining from an offence than any motive for committing it; and that, above all, the power of punishment, as a means for the repression of crime, *depends altogether on its certainty*,—it does appear absurd, to leave to the pleasure of an individual, in every case, what shall be the amount of punishment, if any at all. The wisest legislature

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would have infinite difficulty in so determining the penalty of each offence as to make punishment as effectual as possible in the repression of crime. The legislature of this country leaves the matter to be settled by individuals, acted upon by all kinds of improper motives—such as anger, laziness, compassion—and, above all, utterly thoughtless of the sole object of punishment. Ought it, then, to be matter of astonishment, that crimes should increase with the increase of population and wealth?

Again, the legal punishment of crime ought clearly to be a *public work*, like a bridge, of which the cost is defrayed by a tax on the whole community. The work is beneficial to the whole community; yet the cost of it is thrown upon certain individuals, who have suffered through the previous inadequate performance of that work. This is, as if we should charge toll on the bridge, only from those who had slipped into the water in consequence of defects in the bridge arising from so inadequate a mode of keeping it in repair. Or, to put the subject in another light, for those who take a narrower

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view of it, and suppose that the person injured alone, has an interest in prosecuting the offender, why are we so inconsistent as to make the community pay a portion of the cost of criminal justice? And further, supposing that none but the prosecutor is benefited by a prosecution, and that, therefore, he only ought to pay for the gratification of punishing the offender;—supposing this absurdity—and, consequently, that the criminal law is a work created for the benefit of a particular class—a bridge, as it were, only for the use of a portion of the community—is it not ridiculous to convert the gratification into an infliction, by means of its extravagant cost? What should we think of a bridge company which levied a toll so high as to deter people from using the bridge?

The cost of money, time, and peace of mind, which, according to the law of England, an injured person must incur in bringing to justice the person who has injured him, causes the escape of many notorious criminals. And of this fact, not only are the criminals of London perfectly aware, but they

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dwell on it, and make it a most important item in their calculations of favourable chances. The fact is not proved by my tables, which, indeed, would lead to a contrary inference, since the proportion of escapes through *total want of prosecution* is very small. The extent of the evil could not be fully ascertained, without comparing the number of crimes committed with the number of criminals prosecuted. Wanting so perfect a mode of estimating this cause of crime, I resorted to inquiries of the criminals themselves, seeking to measure the cause by its effects. One effect, then, of throwing the expense of prosecution on individuals, is a general opinion amongst the most experienced thieves, that but few of the robberies committed in and about London are ever brought to the notice of a magistrate; and that, of these failures of justice, a great many are owing to the injured person's dread of losing money and time and incurring great anxiety, by conducting a prosecution.

I know that the law defrays the expense of prosecution in some cases; but, not doing so in all,

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many people think it disgraceful to take the public money, and, even if relieved of the trouble and anxiety attendant on conducting a prosecution, would still be deterred by having to choose between bearing the cost themselves, and applying to the court for repayment of what they had laid out. It should be observed, also, that the expenses allowed by law are seldom, or never equal to those actually incurred; and that to the class of persons, who would not object to receive the public money for performing what the law declares to be a duty to the public, loss of time is equal to loss of money. Upon the whole, it seems plain, that individuals ought to be relieved of the burthen of conducting prosecutions; not merely in justice to themselves, who are already sufferers by the inefficiency of the criminal law, but for the sake of the community, which has the deepest interest in rendering punishment the inevitable consequence of crime. This could not be done effectually without the appointment of a public prosecutor, having no motive adverse to the public good, sufficiently remunerated, and sufficiently re-

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sponsible to the public, together with a tax on the community at large for defraying the cost of what would be a blessing to the whole number.

Let such a suggestion be made in Parliament in a way to make its adoption appear probable; and then let the officers of Newgate be examined as to the effect of that suggestion on the prisoners under their charge. I dare to answer for it, that their report would be most gratifying to him who had proposed the innovation. The substance of the report, I am confident, would be, that the criminal body was greatly alarmed at the prospect of a system of steady certain prosecution; and that this feeling was especially remarkable amongst the most experienced offenders, who are best acquainted with the defects of the present system of prosecution. Moreover, I wish it to be understood, that this opinion is the result of frequent conversations on the subject with all classes of criminals, whose attention I took pains to fix upon a comparison between the English mode of individual prosecution and the public mode pursued in several countries of Europe.

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UNCERTAINTY OF PUNISHMENT.

I HAVE now noticed all the main circumstances which render the conviction for capital offences uncertain. The degree of uncertainty it is impossible to estimate accurately; but a pretty correct notion of it may be formed from the general opinion of thieves on the subject. These people, I have said before, are generally clever; and there can be no doubt of their having the best means of observation as to the uncertainty of punishment generally, as well as the strongest motive for ascertaining the truth. I have talked with hundreds on the subject; and the result of my inquiries is a conviction, that the average period of perfect impunity amongst regular thieves, that is, persons who live wholly by crime, is at the least two years. If commitments, followed by acquittals, convictions for slight offences, and short

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periods of imprisonment, are excluded from the calculation, as they fairly might be, since a mere commitment to Newgate for trial, or a short imprisonment, is not considered a punishment by any but novices in crime, the average period of impunity may be doubled. These calculations are not mine; but I am quite satisfied of their correctness, and I earnestly beg the reader's attention to them; as, when combined with the following facts, they will throw important light on the grand defect of our criminal law, the uncertainty of punishment.

I am perfectly satisfied that the number of cases in which man, woman, or child, once a thief is not always a thief, are so few as to be undeserving of notice. But few persons who indulge in the excitement of gambling ever conquer that propensity; but thieving is a species of gambling far more agreeable than any other game of hazard,—for two reasons; first, because the persons who follow it are generally of a class, who could not live honestly otherwise than by hard and constant labour, than which nothing is more irksome to all who have

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once indulged in idleness;—and secondly, because, in the game of robbery, the player *always wins until he loses all.* Whatever the cause, however, the fact is certain,—that a thief is hardly ever,—I am tempted to say never,—reformed.

In the next place, thieves generally, almost without exception, believe every thing to depend upon calculations of chance. In the thieves' language, the word most frequently used is " chance." Every thief utters the word many times every day. Next to the active business of robbery, and before enjoying its fruits, the most important concern of their lives is the calculation of probabilities; and in this pursuit they show such a degree of acuteness, and arrive at such just conclusions, as would be surprising, if one did not consider the strong excitement of their minds, and their deep interest in avoiding mistakes. They are practical philosophers, convinced, though they might be at a loss to explain their view of the subject, that every event has a cause, and that a sufficient knowledge of particular causes, and of the general operation of

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causes, would enable men to foretel events. Now the calculation of the chances of impunity just mentioned, is strongly impressed on the mind of every thief—the more sanguine, indeed, somewhat enlarging the period, whilst others make the average a little shorter.

Taking the shortest period of perfect impunity to be two years, or the general impression amongst thieves to be, that it is two years, and bearing in mind the enticements of a thief's life, it will appear that in London the trade of thieving may be properly compared to a game of hazard, in which, as said before, *the player always wins until he loses all*, and in which *the average period, during which a player will always win, is two years.* I ask, whether, if such a game were known, and if houses for playing it existed in every part of London, there would be any lack of players? Players, assuredly, would abound; and it is just so with thieving, which is a game encouraged by the law, since legislators must be aware of the temptation to crime, and yet abstain from creating any countervailing motive of

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greater force. The punishments of the law are severe enough, and too severe; it is the uncertainty of punishment, of which too great severity is one main cause, that makes the law proclaim, as it were, impunity of crime; saying to the needy and the idle, "observe the defects of the law, as to detection, prosecution, and trial—see the numerous chances of escape—every one may hope for two years of riotous enjoyment?"

Why are there not more criminals?

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SENTENCE OF DEATH.

At the Provincial Assize the Judge orders sentence of death to be what is called "recorded," as to those capital convicts whom it is not his intention to put to death; and he passes sentence of death, only on those whom he thinks not deserving of mercy. Whereas at the Old Bailey Sessions, where all capital cases occurring in London and Middlesex are tried, the Judge passes sentence of death on nearly every prisoner capitally convicted by a jury.

This step in the administration of capital punishment, being strictly in compliance with the law, is a solemn mockery of truth. The judge, the audience, the prisoner, and the public, are fully convinced that the sentence passed will not be executed in more than one case out of eight. By the table, No. 1, it will be seen, that out of 451

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persons on whom sentence of death was passed in the course of three years, only 55 were executed.

When sentence of death is passed on a murderer, he is executed forthwith. The cases of all other persons under sentence of death are referred to the King in Council; and those sentences which the King in Council confirms, are again referred to the King out of Council, which means to the Secretary of State for the Home Department. These two appeals will be carefully noticed hereafter. They are mentioned here only for the purpose of justifying the assertion, that the sentence of death by the Judge who tries the case, is (except as to murderers,) a mockery of truth. It might be so described, if every one knew that none of the persons sentenced would be executed, as every one does know with respect to the country convicts, as to whom the Judge orders sentence of death to be only recorded. In that case, the sentence would be a merely formal lie, very useless, indeed, and somewhat injurious, as tending to bring the laws

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into contempt, but not utterly revolting to our sense of justice, as is the whole proceeding of passing sentence of death in the metropolis. The sentence of death in London is, in truth, a conditional sentence. The Judge virtually says to the convict, "I condemn you to death; and your life will be taken, unless you can satisfy another tribunal that it ought to be spared. That other tribunal will not decide on your case for six weeks to come. I condemn you, meanwhile, to the most horrible suspense." I shall endeavour to show presently that this is the real meaning of the sentence, as passed in London. It is passed indiscriminately on almost every capital convict, from the hardened burglar, whose crime was attended with violence to the person, to the child ten years old, who has pushed his hand through a pane of glass and stolen a cake *after dark*. I proceed to describe the condition of such convicts, whilst under sentence of death.

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THE CELLS OF NEWGATE AND CONVICTS UNDER SENTENCE OF DEATH.

The last act for the regulation of prisons was framed, I have been told, for the purpose of introducing a system of strict classification of offenders in Newgate, as well as in other prisons. If so, the legislature must have been extremely ignorant concerning the true character of the jail of Newgate, which is not a house of correction, or penitentiary, but merely a prison of detention,—a sort of metropolitan watchhouse, for the secure custody of persons about to be tried or executed. The exceptions to the general rule are few and unfrequent, consisting of persons sentenced, or ordered to be imprisoned, by the High Court of Admiralty, the Commissioners of Bankrupt, the Court of King's Bench, and the two Houses of Parliament. The great

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mass of prisoners in Newgate, therefore, are persons awaiting trial, and presumed by the law to be innocent. To classify them strictly,—for instance, to separate those charged with murder from those charged with petty larceny,—would be to establish a murderers' ward, to increase the prejudice against the persons confined in it, and to act in direct opposition to the legal presumption of innocence. The Court of Aldermen, under whose superintendence Newgate is placed, make no such distinctions; and, indeed, were they inclined to make them, in obedience to repeated and urgent recommendations to that effect, from the late Secretary of State for the Home Department, the extent and form of the prison would still interfere with the plan, or rather render it impracticable. Some classification, however, does take place. The women are entirely separated from the men; boys under fourteen years of age, and not known as old offenders, are kept by themselves in what is called the School; prisoners under sentence of transportation (who, if the Secretary of State did his duty, would be removed

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instantly after sentence, but who often remain for weeks, crowding the prison and greatly increasing the difficulties of its administration,) are also kept by themselves; and lastly, convicts under sentence of death are confined in the press-yard and cells, where they are cut off from communication with every other part of the prison.

The greatest number of persons confined in the cells of Newgate during any part of the three years in question was fifty-nine; but the average may be stated at about twenty. The average period of detention in the cells—that is, between sentence at the Old Bailey and the decision of the King in Council—is about six weeks.

The cells consist of a number of chambers, placed in three rows one above the other, in a stone building which fronts one side of the press-yard, at the north-east corner of the prison, adjoining the residence of the Ordinary or Chaplain, which is the first house on the south side of Newgate Street, as you go towards Cheapside. Each cell is eight feet long by six wide, and generally

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contains three, sometimes four, prisoners. The only furniture of the cells consists of a rope mat and a common stable rug for each prisoner, with an iron candlestick for the use of the party. The walls, floors, and roofs of the cells are of stone. The only communication of the cells with the outward air is by a hole through the front wall, which is three feet thick; and this hole is all but stopped by two frames of close iron bars, crossed. The time during which the prisoners are strictly confined to their cells, is from dusk till daylight during winter, and from dusk till eight o'clock next day in summer. In winter, and in the neighbourhood of St. Paul's, dusk begins at three o'clock in the afternoon, and daylight at nine in the morning, leaving to convicts under sentence of death six hours of the twenty-four for washing, eating, exercise, intercourse with their friends, the chapel service, which they attend every day, and, lastly, exertions to propitiate the King in Council, on whose opinion of their cases depends the question of life or death. At the southern extremity of the cells are two

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large rooms for the use of the prisoners during the day. The continuous outer wall of the cells and of these rooms, being about twenty yards long, forms one side of the press-yard; the other side is a blank stone wall, of the same height, the distance between them being but a few yards; and the two ends of this narrow gloomy place are formed by blank stone walls, armed, like the others, with spikes and *chevaux de frize*. The mode of entrance to the cells is by a narrow dark staircase, and by similar passages running at the back of each row of cells, into which the strong door of each cell opens. The only entrance to the press-yard is through narrow and devious passages, defended by several doors of great strength, and during the day by watchful turnkeys, and, finally, by a door way in the southern wall of the press-yard, where a gate of iron bars confines the prisoners, whilst it permits them to communicate with their friends across a short passage terminated by another gate of bars; a turnkey being placed between those two gates to see and hear all that passes. The wall, which forms

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the northern extremity of the press-yard, abuts upon Newgate Street, and, whatever its thickness, that space alone divides the convict under sentence of death from the busy or thoughtless crowd without, whose voices and even steps he may sometimes hear.

The only capital convicts not removed to the cells instantly after trial, are murderers, women, and very young boys.

During the few hours that remain to the murderer after sentence, he is confined in a solitary cell, set apart for that purpose. If visited at all, it is only by a clergyman, and that by stealth, as it were, since it is understood that the offices of religion are denied to the murderer. In the same unostentatious way he is taken to the scaffold, and is put to death without any religious ceremonies or other formal observances,—a mode of treatment widely different, it will be seen, from that pursued towards most other persons under sentence of death.

Women under sentence of death, if for murder,

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are confined in solitary cells during the few hours that they have to live, and are executed, like the men, without ceremony,—if for any crime less than murder, they remain on the women's side of the prison, and do not undergo any extraordinary confinement or restriction, except being carefully watched, to prevent suicide.

Boys under fourteen years of age, who are sentenced to death, generally remain in the school, and are treated like all other prisoners of their own age. These form an exception to the ordinary practice as to convicts under sentence of death. They and the officers of the prison know, that they will not be executed; and the sentence passed on them, being a mere formal lie, they are not placed, as one may say, betwixt life and death, and do not require any unusual precautions for their safe custody.

The only object of the more strict mode of confinement pursued with the mass of convicts under sentence of death, is to defeat attempts at escape and suicide. Such attempts are always made, or,

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at least, contemplated, by a portion of the convicts sentenced to death at each Old Bailey Sessions. Attempts at escape, generally by hardened offenders who are convicted of some grave offence; and attempts at suicide, by persons of a better station, who have been convicted of such crimes as arson or forgery, and on whom the expected disgrace of a public execution produces, according to the nature of their minds, either a phrensy of fear—when they may be considered insane,—or a deliberate resolve to choose what they consider the lesser evil. Attempts at escape are made or contemplated at all times indifferently, from the moment after sentence up to the very morning of execution; but attempts at suicide are seldom made until after an unfavourable decision by the Council, when, in some cases, a long period of agonizing suspense has destroyed the convict's mind; or, in others, the near approach of death by the executioner utterly deprives him of hope.

One case of an attempt either at suicide or escape, which of the two was never precisely ascer-

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tained, I ought to mention, as illustrative of the effects of the punishment of death;—John Williams,* an active young fellow, twenty-three years old, was convicted of "stealing in a dwelling-house," and his sentence not being reversed, was, on the 13th Dec. 1827, ordered to be executed on the 19th. On the morning of execution, he managed to elude the watchfulness of the turnkeys, and to climb up the pipe of a cistern in the press-yard, as some supposed with the intention of drowning himself in the cistern, but more probably with the wild hope of escaping. Be this as it may, he fell into the pavement of the yard, and seriously injured his legs. Though every one knew that he would be hanged presently, he was attended by a surgeon, who dressed his wounds with the same care as if surgical skill could have preserved the use of those limbs for years. He was carried from the press-yard to the scaffold, and in the struggle of death, blood flowed from his wounds, which became visible to the crowd. This shocking scene was known and commented upon by a great part of the population

* Return, p. 6.

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of London. What were its effects on the minds of those who make our laws, I cannot guess; but I know that it produced on two classes of people in London feelings highly prejudicial to the object of all punishment—the repression of crime. Respectable shopkeepers in the neighbourhood of the scene of execution were heard to say, that worse than a murder had been committed, and that they should like to see the Home Secretary treated in the same way; and I am acquainted with one person, who was robbed to a large amount in the following year, but who was deterred from endeavouring to detect the thieves, merely by the impression left on his mind by this circumstance. Within Newgate, amongst the mass of prisoners awaiting their trials, a sentiment of ferocious anger and desperate recklessness was created, such as, if frequently aroused and generally prevalent, would be the cause of innumerable and horrid crimes.

It should be remembered here, that a batch of convicts is sentenced to death every six weeks in

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London, and that one or more, out of nearly all these bodies of prisoners, attempt escape or suicide. In almost every case, the newspapers publish some of the circumstances; and by one means or other all the prisoners in Newgate, and a great number of criminals in and about the metropolis, are sure to become acquainted with them. Every case produces more or less of the effects which I have described. A good effect, one of them may be called, by those who think that public executions tend to repress crime. It must be acknowledged, that these frequent attempts at escape and suicide have the effect of keeping all the horrors of the punishment of death, (that it has horrors no one will deny,) constantly before the public eye; but whether or not the effect in question be a good one, depends upon whether or not public executions deter from crime. I shall notice that point by-and-bye. Meanwhile, it must be plain that, whatever the evil effect of the punishment of death in arraying the public against the law, and in hardening the

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minds of criminals, part of such effect is produced by the frequent attempts at suicide which take place amongst persons under sentence of death.

That such attempts hardly ever succeed, is owing to the more severe mode of confinement adopted as to this class of prisoners, and, I do but justice to the keeper of Newgate in adding, to his incessant watchfulness. Mr. Wontner, I am sure, would admit, that the most anxious part of his duty is the prevention of escapes and suicides.

It must not be supposed, however, that the keeper of Newgate, or his servants, treat prisoners under sentence of death with peculiar harshness. On the contrary, a stranger to the scene would be astonished to observe the peculiar tenderness, I was going to add respect, which persons under sentence of death obtain from all the officers of the prison. Before sentence, a prisoner has only to observe the regulations of the jail in order to remain neglected and unnoticed. Once ordered to the cells, friends of all classes suddenly rise up; his fellow prisoners, the turnkeys, the chaplain, the keepers, and the

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sheriffs, all seem interested in his fate; and he can make no reasonable request that is not at once granted by whomsoever he may address. This rule has some, but very few, exceptions; such as where a hardened offender behaves with great levity and brutality, as if he cared nought for his life, and thought every one anxious to promote his death. Speaking generally, prisoners under sentence of death are, I repeat, treated with peculiar tenderness; and the only distinction made amongst those who behave with common decency is, that persons convicted of forgery excite an extraordinary degree of interest in all who approach them. By observing this distinction, I was led to suppose, that the interest which is felt for every capital convict, except murderers, must be created by a sense of repugnance to the punishment about to be inflicted upon him; for there can be no doubt, that those who object to the punishment of death generally, are especially opposed to its infliction for the crime of forgery.

The absence of distinction as to all other cases

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must be accounted for as follows:—During the early part of my confinement in Newgate, I used frequently to ask questions of the keeper and chaplain as to the probable fate of certain convicts, whose appearance in chapel had attracted my notice; and for some time I was astonished, by always receiving for answer, in words to this effect—"it is impossible to say—the Council decides—we know some to be more guilty than others and more deserving of the severest punishment, but it so often happens that those escape whom we think most guilty, and those suffer whom we believe to be least guilty, that we can never give an opinion on the subject." I afterwards discovered that persons under sentence of death in Newgate are engaged in a lottery, of which the blanks are death, and that an attempt to foretell the result in any case would be mere guesswork. This point will be more fully explained hereafter. I mention it now, only for the purpose of showing the state of mind, in which all convicts under sentence of death must remain be-

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tween the sentence and the decision of the Council, and of thereby explaining why, allowing for the distinction of forgery cases, the sympathy of the officers of the prison for the inhabitants of the cells is indiscriminate.

Because the public are not aware of the kindness shown generally to persons under sentence of death, they may imagine that it is concealed from the criminals of the metropolis. Just the reverse is the case. If the other prisoners in Newgate are prevented from observing what passes in the cells, the friends and relations of those, who are there confined, spread abroad a knowledge of every word and act of compassion. That they do so, and especially amongst the criminal classes, is proved by this—that the other prisoners in Newgate, who cannot observe what passes in the cells, are always quickly informed thereof by the persons who come to visit them, and who, of course, acquire their knowledge from the visitors of the cell prisoners. At any rate, the other prisoners are at all times fully impressed with the idea, that a prisoner in the cells is an object

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of pity, sympathy and interest. One example of this feeling may be properly cited.

A boy named Rogers,* who had been confined in the school-yard before trial, was sentenced to death, and, contrary to the usual practice with boys of his age, was, immediately after sentence, removed from the school to the cells. I saw him arrive in the school to fetch his clothes, coming from the bar, where sentence of death had just then been passed on him. He told the schoolmaster with great glee, that he was ordered to the cells; and when the other boys crowded round him to learn why he was to be removed, he answered their questions in a triumphant tone, and showed, by his whole manner as well, that he enjoyed the importance conferred on him, by being placed amongst those of whom no one can say which of them will, or will not, be executed.

To guard against misapprehension, I must state that this prisoner had no fear on his own account: he knew very well that his extreme youth would save him from the punishment to which he had been

* Return, page 2.

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sentenced. His satisfaction at being sent to the cells is mentioned, therefore, only for the purpose of illustrating the general feeling of prisoners not in danger, as to the importance acquired by those who are in extreme danger of suffering the last punishment.

It would be sufficiently injurious, if the importance which criminals derive from being sentenced to death were thoroughly concealed from all other criminals. Even in that case a very hurtful confusion of ideas as to the object of punishment must occur amongst the convicts themselves and whatever portion of the public, not criminal, should become acquainted with their conditions and feelings in this respect. But who shall define any limit to the evils, which arise from a universal feeling amongst the criminal classes, that to be condemned to the greatest punishment is to be taken out of the class of criminals, and to obtain, instead of the dislike usually awarded to known criminals, greater tenderness and respect than are often bestowed upon strangers of unquestioned virtue? If any one would thoroughly com-

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prehend the description which I am endeavouring to give of the treatment of convicts under sentence of death, let him spend an hour in the cells of Newgate on the day after the sentences of death have been passed at the Old Bailey, and he will there see a number of the worst criminals (not murderers) attended by the keeper of the prison, the chaplain, and perhaps the sheriffs, and receiving from all these words of condolence, offers of service, professions of interest, delivered in a tone and manner so friendly and sympathising, that were he to fall upon the same scene without any previous knowledge of its true character, he might suppose that he witnessed the sad and affectionate intercourse of parents with their children in distress. There may be readers who will blame these officers of justice, for so commiserating the state of men in the course of suffering a merited punishment for the good of society. I pretend not to defend them otherwise than by saying, that they cannot help what they do. A late sheriff, who, before the trial of a man for uttering forged notes, had spoken rather harshly of

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the prisoner's crime, when informed of the same prisoner's danger, could not help letting tears run down his face, nor hinder his voice from faultering, and his whole frame from being agitated, whilst he expressed his anxious wish to *do every thing in his power* for saving the convict's life. The gentleman in question was Mr. Wilde, of whose humanity I shall have to speak again by and by. Now, it should be known, that in the eyes of 99 out of 100 of the criminals of the metropolis, the sheriff, with his fine coach, full dress, and gold chain, is a personage of great importance; whence the reader will understand that his compassion is all the more esteemed by the criminal, and admired by others of the same class. I have frequently seen the more ignorant sort of convicts highly elated by a long conversation with the sheriff, during which he had but assured them that he feared their situation was desperate; and in these cases, which occurred in the Infirmary, whither the prisoners addressed had been removed on account of illness, other prisoners, awaiting trial, seemed—I cannot speak of their innermost thoughts,

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but they seemed—to envy the capital convicts the distinction of being commiserated by a person in authority. What I have said of the sheriffs is equally true of the keeper, who is next in authority, and whom the prisoners respect accordingly; of the chaplain, and of others who visit the prison from motives of religion, humanity, or curiosity. *Every one* who comes in contact with a man whose death by the hangman is probable, treats him, not as a criminal, but, as an unfortunate. In the treatment of other prisoners, even before trial when they are presumed to be innocent, I never observed any thing like commiseration from persons in authority over them. At the best they are treated with neglect, except for their safe custody; and all convicts not capital are treated as criminals. The same men, once capitally convicted, are treated as brothers or children in distress. Why is the capital convict—he whose crime is most grave and is proven—so favourably distinguished? Because the punishment of death shocks every mind to which it is vividly presented, and overturns the most settled notions of right and wrong.

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APPEAL TO THE KING IN COUNCIL.

It has been said, that by the laws of England a person charged with crime must be tried three times before he can be punished;—first, by the magistrate; secondly, by the grand jury; and, thirdly, by the judge and petty jury. The capital convicts of London and Middlesex are tried four times, and some of them five times. In every case, after conviction by the petty jury, and sentence by the judge, an appeal is had to the King in Council. This forms the fourth trial. Those cases which the Council decides against the accused, are then referred to the King, in point of form, but, in point of fact, to the Secretary of State for the Home department. This constitutes a fifth trial.

That it is right to speak of the proceedings before the Council as *a trial*, seems to be proved by the two following circumstances, not to mention others. First, the Old Bailey judge passes sentence of death on almost every capital convict indiscriminately, quite

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regardless of facts in the case, which, if there were no fourth trial, would surely induce him to pass a milder sentence. Secondly, it will be seen by Table No. 1, that of 451 sentences of death passed by the Old Bailey judge 396 were reversed by the Council. The fiction, or rather pretence, of the law or custom is, that the only duty of the Council is to exercise the king's prerogative of mercy as to certain persons who have incurred the penalty of death; but the fact is, that every member of the Council knows, that, in a great majority of the cases which come before him, the penalty of death has not been really, though it have been legally incurred; and that, in such majority of cases, sentence of death was passed, merely in order to take the case before the Council for an alteration of the sentence.

The circumstances attending this fourth trial will be incredible to those, whose attention has not been in any measure directed to the subject.

First—The question to be determined by the Court of Appeal is of the deepest importance to the accused:—it is the question of life or death.

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Secondly—The court which decides this important question, is a secret court, the members of which, I believe, take an oath of secrecy.

Thirdly—The sittings of the court are held at the residence of the King, at Brighton, Windsor, or in London, indifferently, without notice to the accused.

Fourthly—The prisoner does not appear before the court, either personally or by counsel, his only means of communication with it being by written petition to the King, which must be entrusted to the Secretary of State for the Home department.

Fifthly—The court is composed, for the most part, of cabinet ministers, whose time is fully occupied with the duties of their respective offices, Parliamentary business and party politics.

Sixthly—The court hears no evidence, and is bound by no known rules. The Recorder of London indeed, who has presided at *some* of the previous trials, is present in the Council, and, I believe, makes a statement concerning each case; but, that he does not make a full report of the evidence in

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each case, may be inferred with certainty, since the average number of cases decided on at each sitting of the Council is about twenty, whilst the time occupied by each sitting hardly ever exceeds a few hours, and occasionally is less than an hour.

As the proceedings before this court are secret, I cannot describe them precisely; but to enable the reader to judge of the correctness of the above general description, I proceed to relate some facts.

In 1828 a person accused of uttering forged notes was committed to Newgate for trial.* He had been possessed of property, had held a commission in the army, and joined to showy talents both agreeable manners and a good education. It is needless to speak of the circumstances by which he was gradually reduced to the state of an utterer of forged notes; but they were such as to impel some of his former friends to offer him assistance when the newspapers announced that his life was in danger.

The first step taken by his attorney, after his

* *John Montgomery*, Return, p. 12.

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commitment to Newgate, was to call on Mr. Freshfield, the attorney of the Bank of England, and to offer that, in case the Bank would forego the capital charge, the prisoner should plead guilty to the minor offence of having the notes in his possession, and furnish to the Bank the fullest information as to the persons from whom he had received the notes. The proposal was suggested by the common practice of the Bank attorney in allowing utterers of forged notes to plead guilty to the minor offence, and by the belief that he was extremely anxious in this case to discover the fabricators of the notes. The proposal was favourably received by the Bank attorney, but with this qualification—that as the Government had lately taken offence at the proceedings of the Bank in dispensing of life or death by such compromises with utterers of forged notes, it was necessary that he should prosecute on the capital charge, but that, if the prisoner should put the Bank to no trouble in proving the charge, and should give all the information in his power, the Bank would make every effort to

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save his life. Upon this assurance the prisoner's attorney, who considered it quite satisfactory, delivered to the Bank attorney a statement *in the handwriting of the prisoner*, which minutely described the means by which he had obtained the notes. It was of course determined that the prisoner should plead guilty to the capital charge; and those who were interested for him were satisfied that he would be transported for life, which punishment they had no wish to prevent.

Shortly, however, before the Old Bailey session, at which the prisoner was to be tried, a circumstance occurred, which once more placed his life in the greatest jeopardy. In the previous session a prisoner named Smith* had pleaded guilty to a charge of forgery, on the faith of a promise from the city marshal that his life should be spared. The man's life was saved by that promise, after he had been ordered for execution; but about the time in question, in consequence of some remonstrance from the Secretary of State, the city marshal was publicly reprimanded by the lord mayor for

* Return, p. 10.

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having made the promise. On the day, I think it was, succeeding that reprimand, the prisoner Montgomery received a written paper, signed by the Bank attorney, whereby he was desired to take notice, that the Bank would proceed against him to the uttermost. It was clear to his attorney and his friends, that the Bank attorney had been alarmed at the proceedings against the city marshal, and was desirous to nullify the agreement into which he had entered. To do so, however, was impossible; since he had been furnished with a statement from the prisoner, which precluded any defence to the charge. No other course than that of pleading guilty remained open to the prisoner. Of sheer necessity he took that course, and was sentenced to death.

Before he entered the dock of the Old Bailey he was warned, that the judge would advise him to withdraw his plea of guilty and to take his chance of an acquittal, assuring him that the act of pleading guilty would not tend to save his life. This actually happened; but the prisoner persisted in the

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course, which his written communication to the Bank had rendered unavoidable. He had also been advised not to give any explanation to the judge of his reason for pleading guilty, but to reserve what was to be said on that head for the Council. It will be seen presently, that the advice in question was probably fatal to him. I would direct attention to the fact of his having abstained from explanation when before the Old Bailey judge, as showing how the existence of a court of appeal may prevent the judge, who passes sentence, from learning all the facts of the case.

The time was come now, for endeavouring to save his life by means of the fourth trial. The Bank attorney, being again applied to, would speak only in vague terms from which little could be inferred; and all seemed to rest with the prisoner and his friends. The question was, how to proceed with a secret tribunal, unguided by any known rules.

The ordinary course is to prepare a petition from the prisoner, either nominally to the King but really to the Secretary of State, or to the latter only, both

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in form and substance, stating every circumstance that can be urged in refutation of the charge, or extenuation of the offence, or otherwise having a tendency to mitigate the sentence; and to confirm such statements by affidavits. In this case there was nothing to say in refutation of the charge or extenuation of the offence: the only object was to plead for a mitigation of punishment.

Whilst the prisoner was consulting with his attorney on this point, one of his relations came to London, and undertook the management of his case with the Secretary of State. Circumstances, into which it is needless to enter, led the prisoner to believe, that this relation possessed the means of influencing the Secretary of State; and when he undertook the entire management of the affair, those who had before been striving for the prisoner ceased to move, being fearful of doing harm by any cross, or at least unconcerted interference. A short, and merely formal petition, therefore, was drawn up by the prisoner; and it was understood that the only fact on which his chance of life depended, viz. the

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treaty with the bank, which had rendered the plea of guilty unavoidable, should be stated in a petition from the relation, together with other matters thought fit to make a favourable impression on the Council; whilst it was, at the same time, fully understood, that his relation would *see* the Secretary of State, ascertain whether there were any impression on his mind unfavourable to the prisoner, which might possibly be removed, and, generally, spare no pains to obtain mercy from the crown.

A period of terrible suspense ensued. During this period a gentleman, who had no acquaintance with the prisoner beyond having travelled with him in a stage coach, had reason to fear that the exertions of the relation were not sufficiently active; and he was informed, that at the Home Office the prisoner was suspected of having uttered a forged check; which suspicion, unless removed, would, it was thought, render his execution certain. This person, impelled only by motives of humanity, took infinite pains to prove that the prisoner was not guilty, and did obtain positive proof of the negative;

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having brought the person, to whom the forged check had been uttered, into Newgate, and confronted him with the prisoner, when he made an affidavit to the effect that he had never seen the prisoner before; and this document was forwarded to the Secretary of State. I ought to observe here, that though it was known, that such a charge had been made against the prisoner at the Home Office, the great difficulty was not, as it turned out, to disprove the charge, but to discover by whom it had been made, and who were the parties that would disprove it, provided they could be found. Who made the charge at the Home Office was never ascertained; and the discovery of the person who could disprove it, cost the gentleman of whom I speak, days of constant exertion. In the search, he received no assistance from the Home Office; where, being unknown, he was treated with coldness and apparent suspicion.

The prisoner owned the fee of an estate, which, though greatly incumbered, was considered worth more than the amount of the charges upon it. Im-

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mediately after his agreement with the Bank attorney, he became anxious to convey the property to certain relations, in order that it might not, in consequence of his pleading guilty of the capital felony, devolve to the crown. The relation mentioned before undertook to prepare the necessary deed. Many times the prisoner applied for it, and in very urgent terms as the day of trial approached; but he did not see it till he was in the Old Bailey dock; when he found, that it conveyed the estate, not entirely to the other relations, but to those relations jointly with the one who had prepared the deed. He signed it nevertheless.

At length the recorder's report was laid before the Privy Council; and the Ordinary of Newgate informed the prisoner that the decision was against him, and that he was doomed to die in a few days. The attorney at this time, supposing that nothing had been neglected by the relation, was gone to Scotland on professional business.

The other persons, who had interested themselves for the prisoner, no longer deterred by the fear of

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interfering with the relation, set to work with the forlorn hope of reversing the decision of the Council.

Their first step was to endeavour to learn on what grounds the Council had decided against this prisoner. The question could be asked only of the Secretary of State; and, in order to show that the question was at least not unreasonable, a list was prepared of a great number of persons convicted *of the same offence*, but whose lives had been spared, within the last few years. The gentleman, who proceeded to the Home Office on this errand, obtained no satisfaction. He did not see the first secretary; and I can only state, generally, that he was treated as if he had made a preposterous proposal, being asked whether he knew that the proceedings of the Council were secret? Thus disappointed, he returned to Newgate, when, upon consultation with the prisoner and the officers of the prison, the next point seemed to be, to learn whether the main fact of the prisoner's case had been stated to the Council. I have said before, that the business of stating that fact to the Secretary of State had

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been entrusted to the relation, and may add here, that the prisoner never saw the petition presented by his relation, although he often urgently prayed to be allowed to see it. For the purpose of seeing that petition the gentleman returned to the Home Office; but his errand was again fruitless. He was told, that it was not customary to return petitions; that, whatever the statements in the petition, they would be of no avail in the present case, which had been decided on its own merits; and finally, that there was no hope.

Under these circumstances, although many persons were of opinion that the prisoner's life would yet be saved, if the treaty with the Bank could be proved, the absence of the attorney who had conducted the treaty would have rendered the case desperate, if it had not so happened that the gentlemen now acting for the prisoner had been present during all that had passed between the prisoner and the attorney on that subject. He lost no time in preparing an affidavit which stated; first, the absence of the attorney; secondly, that the prisoner

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had been forced to plead guilty, by the circumstances which the attorney would state upon oath, on his return to London, which was hourly expected. With this affidavit, and a petition from the prisoner, praying for a short respite, in order to give time for the attorney's arrival, he once more visited the Home Office. Asking to see the First Secretary he was told, that that was impossible; next, that Mr. Peel was not there. At length, by dint of entreaty, and something like violence, he succeeded in being admitted to Mr. Peel.

That gentleman received him with great coldness; kept him standing, whilst, ready to sink with fatigue and nervous excitement, he pleaded for the prisoner's life; and at last told him drily, that there was no hope; but without either affording him any explanation as to the grounds on which the Council had decided, or even satisfying him that a petition had been presented by the prisoner's relation. The repulsive manner of Mr. Peel, and his own exhausted state, brought on by several days of agitation, prevented him from saying more than—" Re-

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member, Sir, the statement I now give to you is upon oath." With these words he left the Office.

On the day following, which was the last before that fixed for the execution, the prisoner's attorney arrived in London, and instantly made an affidavit, stating minutely every circumstance of the treaty with the Bank. This document was forwarded to Mr. Peel. Whether it were met by any counter affidavit from Mr. Freshfield, no one interested for the prisoner could ever learn, though Mr. Peel was vehemently urged to confront the two attornies, and so ascertain the truth of the prisoner's statement. My own belief is, that Mr. Peel supposed the statement of a treaty with the Bank to be a pure invention: yet, if the Secretary of State had been the presiding judge of an open court, nothing would have been more easy than to prove to his satisfaction every circumstance of the treaty. Be this as it may, the affidavit of the prisoner's attorney brought no intelligence from the Home Office. Late at night, another attempt was made to induce the Home Secretary to grant a respite for a few days;

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and it is proper to state, that on this occasion the supreme judge, who had to decide the question of life or death, was brought out of the House of Commons, not without much difficulty, and only by the aid of a Member who kindly lent his services for that purpose. He still said, merely, that there was no hope; and two hours later the prisoner took poison and died.

Let not the reader suppose that this case has been picked out as especially illustrative of the bad character of the Court of Appeal. It has been selected because in this case something (though not much,) is known of the proceedings of the fourth and fifth trials. In most cases absolutely nothing is known. In most cases, as in this, the question of life or death depends on facts, or, at least, statements, quite foreign to the conviction; which conviction is, in most capital cases, a mere form, and—to the decree of the presiding judge, which decree generally amounts only to a sentence of agonizing suspense. In this case, there was no lack of money, intelligence, zeal, or the necessary spirit at one

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time, or influence at another, for obtaining communication with the judge. In most cases, the fourth trial becomes, as I have said before, the merest lottery; since the prisoner, shut up in the cells of Newgate, generally without money, often very ignorant, and nearly always without the least influence, must content himself with writing a petition, and leaving the rest to chance. An ordinary prisoner has no means of ascertaining that his petition is received at the Home Office, much less that it is read by the Secretary of State. He cannot learn whether any and what impression has been made on the judge by reports to his prejudice, and much less has he the means of removing such impressions even though they be wholly false.

That the final decision of the Council is influenced by rumours, it is not difficult to prove. To any one who shall deny this, being entitled to contradict me, I would ask, whether, when urgent application was made to save the life of Joseph Hunton, who was executed for forgery in 1828, the First Secretary did not state as one ground for re-

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fusing the application, that the prisoner had committed *other forgeries*, for which he had not even been taken before a magistrate? Did he, or did he not commit such other forgeries? Perhaps he did; but where is the proof? He was not even charged with them by the persons whom, *it is said*, he defrauded. Should the least weight be attached to mere rumours of this kind? But this is not the question—there can be no doubt that the decision of the Council is constantly influenced by rumours to the prejudice of prisoners. It would have been so, probably, in the case of Montgomery, as to the rumour of his having passed a forged check, if great pains had not been taken to prove the rumour false; and very possibly it was so as to other rumours equally false, with which the newspapers teemed at the time of his apprehension. The question is, allowing the fact to be that the Council is influenced by rumours foreign to the conviction, whether the prisoner ought not to be informed of every thing to his prejudice?

The ordinary prisoner has not the least chance of

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learning any thing of the sort. Let us suppose, however, that there is nothing against him but the conviction. He is sentenced to death, with the opportunity of showing cause, as it were, why the sentence should not be executed. In every case, then, the *onus probandi* for a favourable issue rests with the prisoner. His petition, let us suppose, reaches the hands of the First Secretary. Does this judge read it? He may; but there is nothing to compel him; and he is a minister of state, charged with all the affairs of Ireland, with the Home Affairs of England, and with the lead of the House of Commons, perhaps; and engaged in the harassing occupation of party politics. Let us suppose that he reads the petition—still does he remember its contents when in the Council? Considering his multifarious occupations, every one will answer—possibly not. It follows, that, if there were saving facts in the petition, the man was murdered by neglect, or, if you please, by the system.

As a strong proof of the inefficiency of the tribunal for arriving at a just decision, it will be seen

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by the Table, No. 1, that of sixty-two persons ordered for execution by the Council only fifty-five were executed; the others having been spared in consequence of subsequent interference with the Secretary of State. This may be called the fifth trial.

The fifth trial is not open to so many objections as the fourth. In consequence of the great number of persons sentenced to death at each Old Bailey sessions, and of the impossibility of conjecturing to which cases the greatest danger attaches, the prisoner is generally left to conduct his defence before the Council by his own unaided means; but as to those who undergo the fifth trial, the number being small and the danger extreme—death, in short, being certain, unless a good defence can be quickly made—there are always found persons willing to afford assistance to the prisoner. Generally the sheriffs, and nearly always the keeper of Newgate, undertake the prisoner's case in the last appeal, sparing neither time, nor trouble, nor money, in the endeavour to disprove some material part of the

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charge, or to prove some mitigating fact. This occupation, it should be remembered, forms no part of the duty of the sheriffs or the keeper. It is generally undertaken, however, with the greatest zeal. I have known Mr. Wontner and his servants occupied incessantly for days and nights, in an attempt to prove the falsehood of evidence on which prisoners had been ordered for execution. In one of the cases to which I allude, two prisoners were innocent.* They had sent a petition to the Secretary of State for the King in Council; they were ordered for execution; and they would inevitably have been hanged but for the humanity, the zeal, and the skill of Mr. Wilde, the sheriff, Mr. Wontner, the keeper, and Mr. Barrett, the deputy keeper of the prison. The evidence of the innocence of these men was perfectly clear; but it never would have reached the Secretary of State, if infinite pains had not been taken to convey it thither by volunteers in the labour of saving lives. In every case, I believe,—and in most cases, I know,—where the

* James Anderson and George Morris. Return, p. 14.

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sentence of the Council is reversed, much is owing to the exertions of the keeper of Newgate and the sheriffs for the time being. It follows that the persons, whose lives were properly spared after a decision against them by the Council, would have been improperly hanged, if some officers of the prison had not volunteered to enlighten the judge. The statement is hardly credible; but it is a plain matter of fact, of which every one may form an opinion.

Of the extreme difficulty of obtaining a reversal by the Secretary of State of a decision of the Council, none can form an idea who has not been engaged in such an attempt. The Secretary of State has already, as one of the Council, decided against the prisoner. Whatever the new facts brought to his notice, he is loath to acknowledge, that his previous decision would have ended in murder but for those new facts. He is thus strongly biassed to disbelieve the new facts. Moreover, as Minister of Police, he has probably heard rumours injurious to the prisoner, and has, as a member of the Council, reported those rumours,

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and perhaps urged them as the ground of his previous decision against the prisoner. The recollection of those rumours strengthens his incredulity. But towards that disposition of mind, so improper in a judge, there is a yet stronger bias, arising from experience of the number and grossness of the falsehoods, which are told upon oath for the purpose of obtaining remissions of capital sentence. In every case of execution the same exertions are made as in every case of remission; and it is astonishing to mark the facility with which, in the worst cases, affidavits are obtained stating facts favourable to the prisoner. I do believe, from what I have heard and what I know on this subject, that almost every execution is preceded by perjury, having for its object to prevent the execution. In such cases the mass of people in London appear to think, that the crime of perjury is less than the crime of refusing to commit perjury for the prevention of death. No wonder, then, that the judge of last appeal, who has such great experience of the perjury which takes place on these occasions,

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should look with a strong bias towards disbelief at every statement, whether true or false, that is made to him with the view of saving a life.

Another bias of the judge's mind greatly increases the difficulty of saving a person whom it would be improper to destroy. The judge is a man, and his feelings, therefore, incline him to spare the life. He knows this; and, if there be more of pride than of tenderness in his character, he soon learns to *pique himself* on his firmness in preferring duty to mercy. By degrees, as the heart of the judge hardens, his *amour propre* is thus arrayed against the side of mercy, and often against the truth.

Many facts might be adduced to show, that long practice as judge of last resort in London and Middlesex tends to harden a man's heart. I will confine myself to three:

First, as it is, not the judge that presides at the trial, but the Secretary of State, who really decides the question of life or death, the presiding judge is spared many agonizing scenes which are inflicted

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on the Secretary of State. I allude to his interviews with near relations, with the husbands, wives, or children, of persons ordered to die. Almost every Old Bailey Sessions subjects the Secretary of State to the pain of denying, absolutely or for a time, the prayer of some heart-broken wretch, who face to face with the judge, half choaked with grief, and perhaps kneeling at his feet, pleads for the life of a father, a husband, or a child. To undergo this pain, not less probably, on the average, than once a month, must, one would think, injure the health, so as to shorten the life, of him who suffers the pain. Yet the late Secretary, who had suffered it for a great many years, was, at the end of his career, and *in his legislative capacity*, adverse to abolishing the punishment of death. Secondly, when Lord Lansdowne succeeded Mr. Peel, as the judge of last resort in capital cases, the persons in and about Newgate, who, from motives of pure humanity, are in the habit of trying to save lives, were of opinion that the chances of success were greatly increased by the change; not because they

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supposed Lord Lansdowne to be more humane than Mr. Peel in matters unconnected with the punishment of death, but because they imagined that Mr. Peel's long practice in that one matter had rendered him callous, and had led to his piquing himself on his firmness; whilst they expected to find Lord Lansdowne soft hearted, weak, if you please, in proportion to his inexperience. Thirdly, I have seen an Under Secretary of State for the Home Department attending, of course voluntarily, the condemned service in Newgate, and witnessing the dreadful agonies of men whose lives were in his hands, or, at least, in those of his brother, who was at the time Chief Secretary for the same department.

The reader will now, I trust, fully comprehend the nature of the bias of the judge's mind, which enhances the difficulty of saving a person improperly condemned to death. It is not unusual to hear sneers at those who voluntarily face that difficulty. Having over and over again witnessed the pain, which they too suffer in pursuing the task that they impose on themselves, I would offer them the

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tribute of my humble admiration and respect. But what shall be said of the system, which in seven cases out of sixty-two would have destroyed life improperly* but for the voluntary interference of humane and skilful men?

On the other hand, there can be no doubt, that false statements favourable to the accused are sometimes imposed on the Secretary of State as truths, and that lives are saved improperly; that is to say, on the ground of false evidence. Of 451 capital sentences, 369 were reversed—how many of them by means of perjury no one could form a correct estimate; but deducting all those cases, such as very young boys, in which the sentence was a mere form,—speaking, that is, of all the cases in which there was danger—I have little doubt, that half of them were reversed partly in consequence of a false impression made on the mind of the Secretary of State; and I arrive at this conclusion by recollecting my surprise, as well as that of the officers

* See Table, No. 1, under the heads "ordered for execution" and "executed."

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of the prison, whenever a decision of the Council was made known in Newgate, at the *selection* of the Council, for death on the one hand and a remission of sentence on the other. On every occasion, it appeared to me, that many persons had been spared, not any of whom were less guilty, or guilty of crimes less injurious to society, than persons either then condemned or who had been executed shortly before. At last, I became impressed with a belief, that the proceedings of the fourth trial are extremely favourable to a wrong decision. This point requires some explanation.

The fourth trial given to capital convicts in London and Middlesex is said to be a privilege. If the proceedings of the trial tend to a wrong decision, the trial is a privilege to one class of persons; but then it is proportionably disadvantageous to another class. Every where but in London the question of life or death is decided by a judge, singly responsible; who presides at the trial; who hears all the evidence, because this is the last trial; who states fully to the prisoner's face and in open court the

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grounds of his decision; who has no other pursuit than the business of the assize; and whose judicial habits especially qualify him for distinguishing between right and wrong. In London the question of life or death is decided by many and irresponsible judges; who know nothing at all of the case except from report; who conceal the grounds of their decision; who give to rumour the weight of evidence; whose minds are constantly occupied with other and to them far more important matters; and many of whom (including the chief—the First Home Secretary) act as judges here, merely because elsewhere they are skilful party politicians. Surely, then, every thing conspires for a right decision in the country and for a wrong one in the metropolis. In the country it is probably that a man who does not deserve to be hanged will not be hanged, and that one who merits death will be killed. In London, on the contrary, the most experienced and artful offender has the best chance of escape, whilst the most ignorant, and perhaps innocent, of convicts is the most likely to be killed. No one who takes

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the trouble to reflect on the circumstances which attend the final decision of life or death in London, will be surprised that the officers of Newgate should say—"those whom we know to be most guilty often escape, whilst those whom we know to be least guilty often suffer—it is all a lottery." It is, indeed, all a lottery, but with the chances considerably in favour of a wrong decision.

Now this most unjust, cruel and incalculably mischievous practice of an appeal from the presiding judge to chance, or rather to the probability of a wrong decision, springs from the *nature of the punishment*. The plea for the barbarous appeal is *the prerogative of mercy residing in the Crown*. The appeal is never made except in *capital* cases. Why as to the capital cases of London and Middlesex *only*, it would be very difficult to say; though not more difficult than to explain, why the *irreparable* nature of the punishment should be the plea for a mode of proceeding which favours a *wrong decision*.

Arising out of the custom of punishing by chance and with the greatest severity, a phenomenon is

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exhibited in the cells of Newgate well deserving the attention of law-makers. I allude to the opinion concerning their own fate of persons under sentence of death. The best probabilities of escape are exhausted when sentence of death is passed, viz. the probabilities—1, of not being detected; 2, of not being taken before a magistrate; 3, of a treaty with the prosecutor or other material witness; 4, of the prosecutor preferring perjury to taking part in a judicial murder; 5, of the grand jury doing the same; 6, of the judge doing the same; and 7, of the petty jury doing the same in spite of a callous judge. Yet when these seven probabilities of escape are exhausted, when the prisoner's chance of escape has been reduced from perhaps 500 to 1 to 10 to 1, he is still confident, obstinately confident, of escaping the punishment which the law awards for his offence. This statement applies to nearly every case. I heard but of one exception out of 451 cases. Let the most careful inquiry be instituted, and it will be found, that hardly ever does

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a capital convict under sentence of death, but not yet ordered for execution, expect to be hanged.

Now compare this remarkable fact with another. It shall be found, that of prisoners in Newgate charged with minor offences, for which the punishment is slight, a large proportion fully expect to be punished. The statement may be easily verified; as there are means of further ascertaining what I here state of my own knowledge,—that persons liable to slight punishments, though they may *hope* to escape altogether, are seldom *confident* on that point, but generally mix up with their exertions for an acquittal and their hope of liberty, a good deal of thought about their conviction and preparations for undergoing the punishment. For a long while I could not account for this striking difference of feeling between the two classes of prisoners; but at length the following explanation of it appeared satisfactory.

Fear of death is a principle of man's nature; yet every man is so prone to believe in his own superior

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fortune, that the cases are rare when even the mortally sick expect to die on that occasion. Premature death is the almost certain consequence of hard drinking; yet when does the fear of premature death, by itself, operate as a motive to sobriety? Perhaps never. It is just so in respect to hanging for crimes. The principle of the fear of death is counteracted by that principle of self-love and hope, which may be called forth, to the extent of delusion, in nearly every mind. No one, perhaps, expects to escape one trifling penalty of drinking hard, viz. a head-ache. So it is with persons liable to comparatively slight punishments for crime. If they do not fully expect to be punished, at least they do not expect to escape. In truth, they expect to be punished, though they hope to escape. The greater the evil of which there is a rational prospect, the stronger appears the bias to delusion. In punishing with death, legislators have had in view only the universal fear of death; never perceiving, that in proportion to the fear is the delusion of hope. It would be difficult to imagine a more striking in-

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stance of the delusive hope of life, produced by the fear of death, than that which may be always witnessed in the cells of Newgate.

I do not pretend that the capital convict's hope of escape is greater because his chances of escape are less. The fear must not be confounded with the danger. It is an abstract fear of death which blinds him to the actually existing danger. In his blindness, all his thoughts dwell on his one last chance of escape: if he had eight chances instead of only one, his confidence of escaping would be still greater. If, then, we allow that no delusion takes place in 1 out of 100 cases, after sentence of death, what must be the proportion of cases in which, before the exhaustion of the seven chances above recited, the capital criminal really expects capital punishment? Probably not 1 in 1000. Consequently, it may be said, that the numerous chances of escape, arising in great part from the nature of the punishment, and the nature of the punishment independently of chances of escape—the calculations of reason, and the delusion of hope

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excited by fear—conspire to render capital punishment utterly inefficient for the sole end of punishment, which is to present to all a stronger motive for abstaining from crime than the ordinary motives for committing crime. No punishment, probably, however mild, would be effectual, if administered by chance, and with the chances in favour of a wrong decision:—the punishment of death, so administered, is worse than useless to society; for whilst it affords numerous chances of impunity, it leads every criminal, and much more every would-be criminal, to expect impunity; and by affecting to give protection to persons and property, it denies to individuals the protection of their own courage and such weapons of defence as they would use if there were no law.

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THE RECORDER'S REPORT.

THE Recorder of London informs the officers of Newgate of the decisions of the Council; and it is the duty of the Ordinary to tell each convict under sentence of death what the Council has decided for him. The hour at which the Recorder's Report will reach Newgate, is generally known beforehand by the capital convicts and their friends outside the walls. But this is not always the case. On one occasion in 1829, the Council having been held at Windsor, the Recorder did not deliver the decision of the Council until the day after that on which it took place. The prisoners and their friends, therefore, were kept in a state of the most violent suspense for many hours, during which they counted the moments,—the prisoners in their cells, as usual, and their friends in the street in front of Newgate,

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where they passed the night: I have heard the protracted agony of both classes described, by those who witnessed it, in terms so strong that I am unwilling to repeat them. More or less, an agony of suspense is excited amongst the prisoners and their friends by the approach of every Recorder's Report; a mode of punishing which has been represented as well calculated to strike terror into the criminal classes of the metropolis, but which, I believe, produces a contrary effect, by hardening the character of those who are subjected to it. I have been assured, that, on the occasion just mentioned, the crowd of men and women who passed the night in front of Newgate, began, as soon as the hour was past when they had expected the Report, to utter imprecations against the Recorder, the Secretary of State, the Council, and the King; and that they never ceased cursing until the passion of anger so excited was exchanged for joy in some and grief in others; and I myself heard more than one, of those whose lives were spared by that decision of the Council, afterwards express a

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wish to murder the Recorder for having kept them so long in suspense. The fact is, that they had, together with their relatives and friends, been kept in suspense for six weeks:—the extremity of mixed hope and fear, induced by the Recorder's delay on this occasion, only urged them to express the feelings of exasperation which, more or less, are produced by the infliction of suspense on every body of capital convicts. A fact will be stated presently, which shows that the presumed object of keeping the convicts in suspense,—that is, the striking with terror the criminal classes of London,—is not attained.

The Recorder's Report having reached Newgate, the Ordinary visits every convict under sentence of death, and informs him of his fate. The scenes of passionate joy, wild despair, jealousy, envy, hatred, malice, and brutal rage, which follow this proceeding of the Ordinary, should be witnessed in order to be thoroughly conceived. But there would be no advantage in describing them correctly, were that possible. I therefore pass them by, proceeding to the fact promised above.

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Generally, the Recorder's Report reaches the prison late at night. If there be any convicts in the School under sentence of death, all the boys in that ward are made to sit up during the night when the Report is expected. About midnight the Ordinary, attended by some officers of the Sheriff, enters the School, dressed in his canonicals, and calls over the names of those under sentence of death. They step forth from the crowd, three of them, let us suppose, of the respective ages of fourteen, twelve, and ten. The Ordinary, in his most solemn tone, says—"I am happy to inform you, A. B., and you, C. D., and you, E. F., that your cases have been taken into consideration by the King in Council, and that his Majesty has been mercifully pleased to spare your lives." Instantly, the boys fall on their knees, and recite a thanksgiving to God and the King for the mercy graciously vouchsafed to them.

To an uninstructed observer this sight might be very edifying; but to those engaged in the scene it is, in truth, only a mockery. The whole scene is

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got up betwixt the Ordinary, the Schoolmaster, and the boys,—the Ordinary instructing the Schoolmaster, and the Schoolmaster instructing the boys, as to the part which these last are to play in the farce. The boys, amongst themselves, will recite the whole scene before hand; sometimes giving it a different turn, by causing one of themselves, who plays the Ordinary, to say, that the King has ordered the law to take its course; when those who play the convicts will act the most violent distress. Of course, the idea of what they are always made to profess, viz. gratitude to God and the King, never enters their heads; since every one is convinced that, as to these children, there never has been a question of danger. It is curious, however, to observe the satisfaction of the boys who are distinguished by taking a part in this ceremony. Their pride appears to be gratified by the distinction; and and they have just the same air of agreeable excitement and self-importance, for days before the scene takes place, as marks a Westminster boy when he is about to be distinguished by acting in public. The

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other boys, waiting for trial or sentenced to transportation, envy those who are to kneel and give thanks to God and the King; whilst the whole party look forward to the midnight mockery as likely to be very amusing,—"to make," in their own language, "a good bit of fun." That they should be so easily amused is not surprising, when one considers the monotony of a prison life.

The fact goes to prove, that the realities of the Recorder's Report are not calculated to strike terror into the criminals of the metropolis.

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RELIGIOUS OBSERVANCES ATTENDANT ON THE PUNISHMENT OF DEATH.

In the centre of Newgate there is a chapel, which will contain all the inmates of the prison. The duties of the chapel are performed by the Ordinary, a clergyman of the Established Church. Every prisoner, except those who are sick and those who who act as servants in the prison, attends the chapel once a day during the week for about half an hour, and twice on Sundays, when the ordinary church service is performed and a sermon is delivered to the prisoners.

In the chapel, as elsewhere, there is some classification of the prisoners. A gallery to the south is given to the women, who are screened by a curtain. The opposite gallery is usually filled by

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capital convicts, whose sentences have been remitted, and others under sentence of transportation. Beneath the two galleries sit the mass of prisoners for trial; and between these, in the body of the chapel, other prisoners for trial, of what is called "the more respectable class"—that is, persons, who, arriving at the prison well-dressed and strangers to the keeper, are placed in a yard by themselves; as well as the schoolmaster and his boys, who sit round the communion-table opposite to the pulpit. In the midst of the chapel is a large pew painted black, which is called the condemned pew. Those who sit in it are visible to the whole congregation, and still more to the Ordinary, whose desk and pulpit front the centre of the condemned pew, within a couple of yards of it. On either side of the pulpit is a small gallery, one called the sheriff's and the other the keeper's, both of which are occasionally occupied by strangers.

The condemned pew, it will be understood, is the seat of prisoners under sentence of death. It is more or less filled by the results of every Old

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Bailey sessions, and is emptied by each decision of the Council, which consigns some of those who had occupied it to the hulks, and the rest to the gallows.

Let it be supposed that the condemned pew has been lately emptied, and that a new batch of convicts has just been sentenced to death. On the following morning all the inhabitants of the cells attend the service, and sit in the condemned pew. Their demeanour on the occasion, as well as that of the other prisoners, is highly instructive. In that of the mass of prisoners one observes an expression of pity and respect towards the convicts; but that of the convicts shows many differences of feeling. Some tremble, and sigh or weep—some swagger to their places, tossing their heads, smiling, nodding to their friends, and pretending to glory in the distinction of their danger; others appear stupified, creeping into the pew, looking around them vacantly as if unconscious of their state; and some again really behave with the most perfect, I mean with real composure, appearing, as they really are at the

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time, proud of the distinction of being amongst the condemned, but without any admixture of fear,—since these last are either boys whose youth they know protects them, or men convicted of offences, such as returning from transportation, which are never punished with death—or criminals so hardened by constant contemplation of death by the hangman, that they can look forward to it as their own fate with comparative indifference.

The entrance of a new batch of convicts into the condemned pew creates some sensation amongst the other prisoners, and produces a display of various feelings amongst the condemned themselves. But after the day when the condemned pew is refilled, a stranger visiting the chapel would be at a loss to distinguish the capital convicts from the great mass of prisoners for trial. If, however, he were to attend the chapel after an interval of some weeks, he would observe a striking change in the physical condition of most of the capital convicts. In several instances I have seen brown hair turned gray, and gray white, by a month of suspense such as most

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London capital convicts undergo. In the same short period the smooth face of a man of twenty-five becomes often marked with decided wrinkles on the forehead, and about the eyes and mouth; and, in certainly three cases out of four, one month of the cells of Newgate causes a great diminution of flesh over the whole body. "How thin he grows!" is the common remark of the other prisoners, when speaking of one who has passed a month in the condemned pew. But except these changes in the physical state of persons under sentence of death, their appearance in the condemned pew presents nothing remarkable, after the first day or two when the novelty of their situation has worn off.

At length the suspense of the majority is ended by the decision of the Council; and these, on the following day, appear in a gallery of the chapel, placed in the front row, for the purpose, I conclude, of more fully seeing and being seen by their late comrades, who still remain in the condemned pew. On first meeting in the chapel after their separation, the two parties generally regard each

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other with fixed attention, and are closely watched by the rest of the congregation. What their respective feelings may be on the occasion I pretend not to divine; but having witnessed the scene more than twenty times, I can form some guess at the feeling which it excites in the other prisoners. My own strongest sentiment on these occasions was one of anger—of that sort of anger, which is commonly produced by witnessing gross injustice. One sees twenty-five fellow creatures, who yesterday were all under sentence of death—twenty of them are saved, and five are utterly condemned. Are the five the most guilty? By no means. Perhaps two or three out of the five are within a degree of being the least guilty, whilst half of the twenty are the most guilty. But guilty in what respect? in the eye of the law? No, for in the eye of the law they are all equally guilty. How then?—why in respect to the degree of injury which the crime they have committed inflicts on society; by which rule alone ought to be measured, and in point of fact is measured, the anger of society towards criminals. *Here*

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then we see left for execution an ignorant creature, who, in some measure pressed by hunger, has stolen a sheep; or a broken tradesman, who, in the hope of retrieving his affairs has passed a forged acceptance for £20, firmly intending to "take up" the bill, and therefore not to commit a robbery; whilst *there* is snatched from death a notorious hardened burglar, a criminal by trade, whose every crime tended to murder. By whom was the selection made? Look back, reader, to the account of the fourth trial, and then say whether a sight like this would not rouse your indignation?

Just, I do believe, as there is gross injustice in every decision of the privy council, so every separation of capital convicts who are to be saved, from those who are to be hanged, produces in the minds of those who witness the separation, a strong feeling of anger — a feeling which, considering who the persons are in whose breasts it is excited, soon becomes desperation; the very worst state of mind for any one, and the last, therefore, which it is the true object of punishment to excite amongst the criminals of society.

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In a desperate mood the prisoners in Newgate are called to pray for all their fellow creatures, and "especially for those now awaiting the awful execution of the law." These words are introduced into every morning service between the decision of the Council and the execution of those whom it has condemned.

I would not undervalue the power of religion for the reformation of criminals, if it were used in conjunction with a rational and just system of punishment; but used as it is, in conjunction with gross injustice, and even as part of an act, which that very religion describes as the greatest of crimes, the whole scene becomes a mockery equally of reason and religion. Murderers about to be executed do not pass through any religious ceremonies; they are not prayed for by their fellow-prisoners; and, if they have the benefit of religious offices, that consolation is bestowed on them in the strictest privacy. And why? The answer I have always received is, that it would be wrong to *show* the least tenderness towards a murderer, and still more wrong

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to excite in his fellow-prisoners a sentiment of compassion and sympathy, by causing them to pray for him. Then why show tenderness and excite the sympathy of criminals generally towards certain other criminals on whom you inflict the punishment awarded to the murderer? What is the object of your distinction? It has no object.

From the moment that a prisoner enters the cells of Newgate, no pains are spared to excite in him a strong sentiment of religion; and this course is pursued towards all, without distinction, who are considered to be in danger. I doubt very much whether the attempt ever succeed until after a prisoner is ordered for execution. The Reverend Mr. Cotton, the ordinary of Newgate, who has been chaplain of the jail for more than a dozen years, has often acknowledged to me, that he does not remember an instance of what he considered sincere conversion to religious sentiments, except in prisoners who were executed. A very great show of religious fervour is often made by prisoners even from the moment of their entrance into Newgate,

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still more after they enter the cells; but in such cases, when the punishment is finally settled at something less than death, the prisoner invariably behaves as if all his religion had been hypocrisy. Still there can be no doubt that a considerable number of those who are executed, die with a firm expectation of happiness in another world. I cannot explain the contradiction—let the reader judge for himself.

Two persons, say A. and B., are ordered for execution. They both display the liveliest faith in the doctrines of Christianity. Apparently the minds of both are equally filled with religious thoughts, to the exclusion of what belongs to this world. And the sincerity of both is equally manifest; for any one who watches them may be sure, that they have *ceased to think of their own situation*, otherwise than as they look forward to the approaching execution "as the happiest moment of their lives." I quote the words which are frequently uttered by persons ordered for execution, and to all appearance with entire sincerity; for it is an indubitable fact, that

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nearly in all such cases of religious fervour, the bodily health of the enthusiast is excellent, his sleep sound, his appetite good, his pulse steady, and his skin moist; whilst, speaking generally, he who goes to the scaffold scoffing at religion is full of bodily disease, of which the main symptoms are want of appetite and sleep, a rattling or fainting pulse, and a skin hot and dry as if he were in a burning fever. Now in the supposed case of A. and B. the physical symptoms are precisely alike, whilst the language and conduct of the two men indicate the same degree of religious fervour. A. is hanged, blessing the executioner, and lost to all but one sentiment, that of confidence in his own salvation by faith. B. is spared, and within a week is heard laughing or railing at all religion. I have said before, that it is chance, which generally decides who shall be hanged and who spared. Consequently we are not to suppose, that A.'s greater criminality was the cause of his greater enthusiasm; nor can we indeed presume that his religious feelings were more profound than those of B. Judging

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from several actual cases of this kind, I should say, that if B. had been hanged and A. spared, the same conduct would have attended the same circumstances, without regard to the person concerned.

It is not often that much religious fervour is displayed by convicts until after they are ordered for execution; nor are the same pains taken to imbue them with religious feelings previously to the decision of the council. As soon as a man is ordered for execution, the great increase of his danger produces extraordinary exertion on the part of those who administer the offices of religion to the inmates of Newgate. These are the ordinary, a Catholic priest, and one or two dissenters, who volunteer their services, but who do not confine their offers of service to persons of their own sect. The Catholic priest attends the cells only when a Catholic is in danger. As soon, then, as the council has selected from a body of Old Bailey convicts those who are to be executed, the Ordinary and his assistants visit the press-yard frequently every day, and indeed

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almost live with the condemned men, exhorting them to repentance, prayer, and faith.

In about half such cases the exertions of religious teachers are most successful, and are attended, undoubtedly, with the happiest effects on the prisoners —the effects described above, as produced by religious sentiments. In about one case out of four no religious impression is produced; but the prisoner goes through all the ceremonies of his situation with an air of indifference, being occupied to the very last moment with the hope of a reprieve. In the fourth case, not only do the teachers fail in their endeavours to produce a religious feeling, but those very exertions have an effect directly opposite to the one intended, causing the prisoners to rail, I may say to rave, against religion, in terms of ridicule, scorn, and violent hatred. I should but shock the feelings of many, and without any countervailing advantage, by repeating the language, or particularly describing the conduct, of those prisoners, who take offence at the anxiety of the chaplain and others to imbue them with religious senti-

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ments. But I may add that, on almost every execution day, on which several are hanged, the chaplain is subjected to the most outrageous insults from one or more of the doomed men. He will readily confirm this statement. And it may be further proper to say, for the information of religious persons amongst those who make our laws, that, every year, several of their fellow-creatures are cut off in front of Newgate, in the very act of scoffing at God, and Christ, and the Holy Sacrament.*

Let us return to the condemned pew, supposing it to contain four persons ordered for execution. The rest of the congregation, I have said already, pray for the condemned during each morning's service; but, on the Sunday preceding the execution, there is a grand ceremony, usually called "the condemned sermon," when, besides the sermon, which

* It is immediately before the execution that the Ordinary administers the sacrament to those who wish to receive it. Those who do not wish to receive it, but to whom it is offered with earnest exhortation, are thus incited to use language on that particular point, which, for the reason given before, it is not fit to repeat.

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is of course made for the occasion, appropriate hymns are sung—such as "the lamentation of a sinner;" and if the execution be to take place next day, part of the burial service is performed.

The condemned service is conducted with peculiar solemnity, being attended by the sheriffs in their great gold chains, and is in other ways calculated to make a strong impression on the minds of the congregation, who may be considered as representing the criminals of the metropolis. Whether the impression be a good or a bad one, I leave the reader to decide: but in order that he may have the necessary materials for deciding justly, I lay before him the following description of a condemned service, premising only this—that not a circumstance is stated which I have not witnessed.

The sheriffs are already seated in their own pew, accompanied by their under-sheriffs, and two friends drawn thither by curiosity. Not far from them appear two tall footmen, swelling with pride at their state liveries. The Ordinary is in his desk: his surplice is evidently fresh from the mangle: and

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those who see him every day observe an air of peculiar solemnity, and perhaps of importance, in his face and manner. The clerk is busied, searching out the psalms proper for the occasion.

The tragedy begins. Enter first the schoolmaster and his pupils; then the prisoners for trial; next the transports, amongst whom are the late companions of the condemned men; and then the women. Lastly come the condemned. They are four in number. The first is a youth, about eighteen apparently. He is to die for stealing in a dwelling-house goods valued at more than £5. His features have no felonious cast: on the contrary, they are handsome, intelligent, and even pleasing. Craft, and fear, and debauchery have not yet had time to put decided marks on him. He steps boldly, with his head upright, looks to the women's gallery, and smiles. His intention is to pass for a brave fellow with those who have brought him to this untimely end; but the attempt fails: fear is stronger in him than vanity. Suddenly his head droops; and, as he sits down, his bent knees tremble and knock to-

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gether. The second is an older criminal, on whose countenance villain is distinctly written. He has been sentenced to death before, but reprieved, and transported for life. Having incurred the penalty of death by the act, in itself innocent, of returning to England, he is now about to die for a burglary committed since his return. His glance at the sheriffs and the ordinary tells of scorn and defiance. But even this hardened ruffian will wince at the most trying moment, as we shall see presently. The third is a sheep-stealer, a poor ignorant creature, in whose case there are mitigating points, but who is to be hanged, in consequence of some report having reached the ear of the Secretary of State, that this is not his first offence; and, secondly, because, of late, a good many sheep have been stolen by other people. He is quite content to die: indeed, the exertions of the chaplain and others have brought him firmly to believe, that his situation is enviable, and that the gates of heaven are open to receive him. Now observe the fourth—that miserable old man in a tattered suit of black. He is

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already half dead. He is said to be a clergyman of the Church of England,* and has been convicted of forgery. The great efforts made to save his life, not only by his friends but by many utter strangers, fed him with hope until his doom was sealed. He is now under the influence of despair. He staggers towards the pew, reels into it, stumbles forward, flings himself on to the ground, and, by a curious twist of the spine, buries his head under his body. The sheriffs shudder; their inquisitive friends crane forward; the keeper frowns on the excited congregation; the lately smirking footmen close their eyes and forget their liveries; the ordinary clasps his hands; the turnkeys cry "hush;" and the old clerk lifts up his cracked voice, saying, "Let us sing to the praise and glory of God."

People of London! is there any scene in any play so striking as this tragedy of real life, which is acted eight times a year in the midst of your serene homes?

They sing the Morning Hymn, which of course reminds the condemned of their prospect for to-

* *Rev. Peter Fenn.* See Return, p. 14.

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morrow morning. Eight o'clock to-morrow morning is to be their last moment. They come to the burial service. The youth, who, alone of those for whom it is intended, is both able and willing to read, is, from want of practice, at a loss to find the place in his prayer-book. The ordinary observes him, looks to the sheriffs, and says aloud, "the Service for the Dead!" The youth's hands tremble as they hold the book upside-down. The burglar is heard to mutter an angry oath. The sheep-stealer smiles, and, extending his arms upwards, looks with a glad expression to the roof of the chapel. The forger has never moved.

Let us pass on. All have sung "the lamentation of a sinner," and have seemed to pray, "especially for those now awaiting the awful execution of the law." We come to the sermon.

The ordinary of Newgate is an orthodox unaffected Church of England divine, who preaches plain homely discourses, as fit as any religious discourse can be fit for the irritated audience. The sermon of this day, whether eloquent or plain,

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useful or useless, must produce a striking effect at the moment of its delivery. The text, without another word, is enough to raise the wildest passions of the audience, already fretted by an exhibition of gross injustice, and by the contradiction involved in the conjunction of religion with the taking away of lives. "The sacrifices of God are a broken heart: a broken and contrite heart, O God! thou wilt not despise."* For a while the preacher addresses himself to the congregation at large, who listen attentively — excepting the clergyman and the burglar, of whom the former is still rolled up at the bottom of the condemned pew, whilst the eyes of the latter are wandering round the chapel, and one of them is occasionally winked, impudently, at some acquaintance amongst the prisoners for trial. At length the Ordinary pauses: and then, in a deep tone, which, though hardly above a whisper, is audible to all, says—"Now to you, my poor fellow-mortals, who are about to suffer the last penalty of the law." But why should I repeat the whole? It

* Psalm li. v. 17.

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is enough to say, that in the same solemn tone he talks for about ten minutes of crimes, punishment, bonds, shame, ignominy, sorrow, sufferings, wretchedness, pangs, childless parents, widows and helpless orphans, broken and contrite hearts, and death to-morrow morning for the benefit of society. What happens? The dying men are dreadfully agitated. The young stealer in a dwelling-house no longer has the least pretence to bravery. He grasps the back of the pew; his legs give way; he utters a faint groan, and sinks on the floor. Why does no one stir to help him? Where would be the use? The hardened burglar moves not, nor does he speak; but his face is of an ashy paleness; and, if you look carefully, you may see blood trickling from his lip, which he has bitten unconsciously, or from rage, or to rouze his fainting courage. The poor sheep stealer is in a phrensy. He throws his hands far from him and shouts aloud, "Mercy, good Lord! mercy is all I ask. The Lord in his mercy come! There! there! I see the Lamb of God! Oh! how happy! Oh! this is happy!"

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Meanwhile, the clergyman, still bent into the form of a sleeping dog, struggles violently,—his feet, legs, hands, and arms, even the muscles of his back, move with a quick jerking motion, not naturally, but, as it were, like the affected part of a galvanized corpse. Suddenly he utters a short sharp scream, and all is still.

The silence is short. As the Ordinary proceeds "to conclude" the women set up a yell, which is mixed with a rustling noise, occasioned by the removal of those whose hysterics have ended in fainting. The sheriffs cover their faces; and one of their inquisitive friends blows his nose with his glove. The keeper tries to appear unmoved; but his eye wanders anxiously over the combustible assembly. The children round the communion table stare and gape with childish wonder. The two masses of prisoners for trial undulate and slightly murmur; while the capital convicts, who were lately in that black pew, appear faint with emotion.

This exhibition lasts for some minutes, and then

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the congregation disperses; the condemned returning to the cells; the forger carried by turnkeys; the youth sobbing aloud convulsively, as a passionate child; the burglar muttering curses and savage expressions of defiance; whilst the poor sheep-stealer shakes hands with the turnkeys, whistles merrily, and points upwards with madness in his look.

Of what use are the religious ceremonies in which persons about to be hanged are made to play a part? The question should not give offence to the most religious; since it applies only to the *ceremonies*. These, it would appear, are of no peculiar service to the condemned—that is, all the good which he derives from religion might be bestowed on him without any public ceremonies. The object then, of the religious ceremonies in which he shares, is to make a useful impression on the other inmates of the prison. Is this object effected?

Not to repeat what has been said concerning the religious distinction that is made between murderers and all others sentenced to death, I would observe

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here, that the impression which we intend to make on the inmates of a prison, by means of these religious ceremonies in conjunction with the punishment of death, is either a religious impression for their own good in another world, or a moral impression to deter them from crime. If the former, what must be the effect of frequently exhibiting to them such conduct as that of the blaspheming burgler just described? If the latter, is it possible to imagine any thing more likely to defeat the object in view than the exhibition of religious enthusiasm converting the last punishment into the greatest of favours, and displaying the worst of criminals as the chosen of God for an eternity of unspeakable joy?

Even if any religious impression were made on the other criminals, if they were brought to believe that faith in Christ insures eternal happiness, still the sight of the worst criminals, happy and glorious in religious enthusiasm, might have a very injurious effect on them, since it would show crime, not denied, to say the least, the very happy pre-

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sent prospect of speedy and everlasting happiness elsewhere. But the fact is, that the religious enthusiasm of those who are at the point of judicial death, is not communicated to the other inmates of the prison. These last, not being wound up to the same pitch of excitement as the condemned, do not dwell on the subject, to which their attention is drawn by religious ceremonies in conjunction with the punishment of death, either for a sufficient length of time, or with sufficient earnestness, to imbibe religious feelings. They stop short at that, which only rouses their worst passions—the palpable absurdity of mixing a religion of charity and forgiveness with acts of irreparable vengeance. When, therefore, they are brought to think of religion at all, it is with this impression—that the religion is a fraud, and its teachers cheats. And next, as no good comes of exhibiting religious enthusiasm in Newgate, so the exhibition there of what may be called practical blasphemy, both of them in conjunction with the punishment of death, produces evils in proportion to whatever may be

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the advantages of religion. For, in the first place, the preacher of the Gospel—he whose proper business it is to instruct and improve the minds of the worst portion of society,—comes to be considered as an adjunct of the executioner; a notion always prevailing in Newgate, that the main business of the Ordinary is to break the spirits of capital convicts, so that they may make no physical resistance to the hangman—than which nothing could more disparage religion itself: and, secondly, the frequent sight of a man in the vigour of life, but at the point of death, treating religion with scorn and insult, must lead the greater number of spectators, who think at all, to think meanly of that religion. As one proof that this is the effect on the prisoners generally of the religious punishment-of-death ceremonies of Newgate, I will mention a remarkable fact.

On the day of execution there is no service in the Chapel of Newgate. On the following day, the capital convicts, whose companions have been hanged, are required to return thanks for their narrow escape. The firmest disbeliever of religion,

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if he had not been lately irritated by taking part in such a scene as the condemned service in Newgate, could hardly witness this ceremony without being affected. The men, who were so lately snatched from the jaws of death, kneel, whilst the rest of the congregation sit, and the Ordinary, in a tone of peculiar solemnity, says—"Almighty God, Father of all mercies, we, thine unworthy servants, do give thee most humble and hearty thanks, for all thy goodness and loving kindness to us, and to all men, *particularly to those who desire now to offer up their praises and thanksgivings for thy late mercies vouchsafed unto them.*" Could any one, knowing the late situation of the kneeling men, looking as they do at the empty pew, occupied, when they saw it last, but a few hours ago, by their comrades who are now dead; could any one, not disgusted with the religious ceremonies of Newgate, witness this scene without emotion? Hardly any one; but what are the feelings of those who take part in it? I have been present at the scene not less than twenty times, and have invariably observed, that many of the kneeling

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men or boys laughed whilst they knelt, pinched each other, and, when they could do so without fear of being seen by any officer of the prison, winked at other prisoners in derision of what was taking place; and I have frequently heard men and lads who had been of the kneeling party, boast to their companions, after the service, that they had wiped their eyes during the thanksgiving, to make the Ordinary believe they had been crying.

Let me now remind the religious reader, that the profanations of religion constantly going on in Newgate, exist solely in consequence of the punishment of death being extended to other crimes than murder. In the case of the murderer, there are no religious ceremonies. Why as to others? The question is hard to answer: but there is a harder question still;—why does a Christian society destroy such of its members, as Christian men yet dare not put to death without tenderly endeavouring to bestow on them the consolations of religion?

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EXECUTIONS.

WHATEVER the defects of all the stages of capital punishment, except the last, that last act—the execution—may be supposed calculated to deter from crime. Many people believe, that occasional executions in public, even though the persons who suffer death be selected by chance and be by no means the most guilty members of society, must have a salutary effect on the public mind, by impressing every one with an idea of the bare possibility that capital crime may be punished with death. This vulgar notion is sometimes expressed by words to the following effect—" the power of the law consists in its terrors: if you wholly cease to hang, the common people will have nothing to fear: therefore hang one now and then." A belief precisely oppo-

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site to this was forced on me, by fact after fact, in spite of an ignorant attachment to the vulgar notion; and my own conversion to the doctrine of Romilly, Buxton, and Bentham, is an additional fact presented to the reader. When I entered Newgate, (it cannot be egotism that prompts a man to speak of himself in connection with that place,) I had not a doubt of the efficacy of public executions in deterring from crime. By degrees, I came firmly to believe just the contrary. Newgate is the very best place in which to form a sound opinion on the subject; that is, an opinion deduced from all the facts of the case. I will now endeavour to lay before the reader the facts connected with public executions, which assisted to cause a total revolution of my own opinion.

All readers of newspapers must be acquainted with the legal and religious ceremonies observed at public executions, and with the usual behaviour of the sufferers. The utmost publicity is given to the smallest details of what is called "launching criminals into eternity." I shall not, therefore, dwell on

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the mere deed of the hangman, except for the sake of publishing circumstances, not generally known, which may be useful in determining the effect of public executions.

First. Having taken great pains to ascertain the feeling of the mass of spectators at each execution, during the three years to which these pages relate, I am able to assert positively, that, in every case but one (executions for murder inclusive,) the assembled crowd sympathized with the criminal and expressed feelings of compassion towards the dying person, and of hatred towards the law and its principal executioner, the judge of the fourth and fifth trials. The case of exception was that of Esther Hibner,* hanged for destroying a parish apprentice by repeated acts of cruelty. On that occasion the assembled crowd shouted bravos, and clapped their hands, as the woman was "launched into eternity." On every other occasion the sympathy and anger of the crowd were expressed by such cries as "God bless

* Return, p. 20.

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you!" "shame, shame!" If the late Under Secretary of State for the Home Department assisted at a condemned sermon in Newgate for the purpose of instructing himself, it were to be wished that, with a similar view, he would attend a few executions in front of the jail. Whoever will undergo the pain of witnessing the public destruction of a fellow-creature's life in London, must be perfectly satisfied, that, in the great mass of spectators, the effect of the punishment is to excite sympathy for the criminal and hatred of the law.

Secondly. From the reports of thieves and other criminals, whom I questioned on this point, not occasionally, but whenever an opportunity occurred during three years, I feel assured that a considerable portion of the crowds which assemble to witness executions in London, consists of thieves. From all I could learn, I am inclined to believe, that the criminals of London, spoken of as a class and allowing for exceptions, take the same sort of delight in witnessing executions as the sportsman and soldier find in the dangers of hunting

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and war. One would suppose that the practice of crime, as a trade, furnishes, by itself, sufficient excitement; but, perhaps, the state of constant alarm in which criminals live, renders them callous to ordinary excitements, and creates in them an appetite for some excitement, which would be painful instead of agreeable to people in general. Be this as it may, nothing can be more sure than, that the sight of an execution is considered a treat by most habitual criminals of the metropolis; and that there is hardly a regular thief in London, who has not frequently gone out of his way to be present at executions. This statement may be abundantly confirmed by examining the officers of the City Police.

Thirdly. From inquiries made of the boys confined in the School Yard of Newgate, or rather, I ought to say, from having overheard the conversation of the boys amongst themselves, I am satisfied that every public execution *creates* some criminals. Every execution in front of Newgate is attended by some boys not yet criminal, apprentices, errand-boys, and children on their way to or from school;

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and though, unfortunately, I neglected to keep an account of the number of cases ascertained by myself, I am confident, that few Old Bailey Sessions pass without the trial of a boy, whose first thought of crime occurred whilst he was witnessing an execution. Not less, I venture to say, than a dozen boys have assured me, that they were led to become thieves by attending executions. To some of them, the idea occurred simply through witnessing the struggles of a dying thief; to others, it was suggested by thieves, with whom they were led to form acquaintance by the excitement of the occasion, and who took advantage of that excitement to speak, with success, of the enjoyments of a thief and his many chances of impunity. And one grown man,* of great mental powers and superior education, who was acquitted of a charge of forgery, assured me that the first idea of committing a forgery occurred to him at the moment when he was accidentally witnessing the execution of Fauntleroy.

* As this person was acquitted, and is now a good member of society, his name is purposely omitted.

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Fourthly. I never missed an opportunity of leading prisoners, whose sentence of death had been remitted by the Council or the Secretary of State, to converse with me about executions and the effect of those shows on the individual thus led to express his own feelings. With a great many capital convicts, whose sentences had been remitted, I held a dialogue to the following effect. Indeed, what follows is copied, omitting some oaths, from a note made at the time, of a conversation held with a convict* who was within an ace of being hanged for coining.

Q. "Have you often seen an execution?"—A. "Yes, often."

Q. "Did not it frighten you?" A. "No—why should it?"

Q. "Did it not make you think that the same would happen to yourself?" A. "Not a bit."

Q. "What did you think then?" A. "Think? Why I thought it was a —— shame."

* As he was committed before May, 1827, his name does not occur in the Return.

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Q. "Now when you have been going to run a great risk of being caught and hanged, did the thought never come into your head, that it would be as well to avoid the risk?" A. "Never."

Q. "Not when you remembered having seen men hanged for the same thing?" A. "Oh! I never remembered any thing about it; and if I had, what difference would that make? We must all take our chance. I never thought it would fall on me, and I don't think it ever will."

Q. "But if it should?" A. "Then I hope I shall suffer like a man—where's the use of snivelling?"

The above, though actually written down at the time, is but a sample of many like conversations; and I beg the reader to observe, that in every case the answers were the same in substance, whilst the questions were always framed so as to have elicited answers of quite another description, it had been true that public executions excite terror amongst criminals.

Fifthly. One would think, that the execution of

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three or four of the inmates of Newgate in front of the prison would, at least during some hours after the deed, leave a solemn impression on those who remain behind. In the night preceding the execution many of the prisoners hear the noise of hammers striking the scaffold in the course of being raised. When the procession of the pinioned men moves from the Press-yard to the scaffold, headed, as all the prisoners know, by the Ordinary reading the service for the dead, the great bell of the prison tolls mournfully, like a church bell at ordinary funerals. And when the tolling of the bell ceases, all know that their late companions are in the agony of death. All know too, that for about an hour the bodies of the dead men remain hanging in the street. If there were any terrors in the punishment of death, evidence of them would appear on this occasion.

Now I took great pains to observe the demeanor of the prisoners generally during and immediately after executions. For a few minutes, whilst the death-bell is tolling, the usual noises of the prison cease, and most of the prisoners are perfectly silent

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and motionless. The common expression of their features is strained attention with the ear. They seem anxious to learn the exact moment when their comrades cease to breathe. But no sooner is their curiosity satisfied, than they talk with unusual gesticulation and noise. The feeling which their language describes is savage recklessness. Now and then I have heard a man speak mournfully of those who had just been slain; but, generally, the execution is immediately followed by violent language, abusive of the law and the authorities, full of desperate threats, brutal oaths and other savage expressions. It can hardly be doubted that, every year, persons confined in Newgate, who have never committed any crime accompanied by violence, are converted into savage burglars and merciless footpads, by the feelings of anger and desperation which the killing of their late companions engenders. But the evidence of such angry feelings, which follows each execution, lasts but a short while. Two hours after the execution, the prisoners in Newgate have resumed their ordinary pursuits and demeanor.

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The more excitable spirits, indeed, occasionally recur to it with the sentiments before described; but the great mass never think of it again, being so hardened by their familiarity with such events as to look upon them, except at the very moment of their occurrence, with complete indifference. It may be concluded therefore—and this is my own firm belief—that upon hardened offenders the execution makes no more impression than the death of a fly; whilst it is apt to convert the merely dishonest into the most violent and reckless of criminals.

Lastly. Let the schoolmaster of Newgate be examined, and he will prove that for some days after every execution a common amusement of the boys is to play the scene over again; one boy acting the convict, another the Ordinary, a third the Sheriff, and a fourth the hangman. I have seen this done many times; and, on one occasion, before the bodies of the men just hanged had been removed from the scaffold. To dwell upon the fact were needless. It removed the last doubt, that yet lingered in my own mind, of the inutility of public executions.

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TRANSPORTATION TO THE COLONIES.

THE sentence of death passed on capital convicts at the Old Bailey is, in the great majority of cases, remitted to transportation for life; and the remitted sentence is generally executed. Original sentences of transportation, in the case of convictions not capital, and for periods short of the whole life, are not generally executed; a large proportion of the convicts so sentenced, being detained in the hulks for periods averaging about half of the term named in the sentence. The distinction should be borne in mind, since it explains, that a common objection to the punishment of transportation as at present administered—namely, that its execution after sentence is uncertain,—does not apply to the class of criminals here under notice. In fact, transportation for life is the punishment actually inflicted on nearly

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all capital convicts whose lives are spared by the court of appeal. Allowing that the punishment almost invariably follows the sentence, a question still remains—Does the punishment itself hold out a motive, for abstaining from capital crimes, stronger than the ordinary motive for committing them? The question, which highly deserves the attention of those who are seeking to abolish the punishment of death, shall be answered by facts.

Newgate affords the best means of observing the effect of sentence of transportation for life, both on the persons so sentenced and on the criminal body at large. The prison generally contains a considerable number of persons under sentence of transportation for life. They are confined together; and separately from all other prisoners, except such as are also under sentence of transportation, but for shorter periods. Any one visiting the whole prison would find the inmates of one part of it more careless, gay, and noisy, than all the rest. The great mass of prisoners for trial are thoughtful, anxious, and sad, speaking comparatively with what would

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mark the same number of persons, of the same class, if shut up together and not affected by suspense; whilst those, who are under sentence of death, display like symptoms of uneasiness in the highest degree. The yard and wards of the transports, on the contrary, generally present a scene of mixed hilarity and quarrelling, much restrained, indeed, by the officers of the prison, but still plain to the most careless observer.

For a long while it appeared to me, that the peculiar recklessness of one portion and cheerfulness of another portion of the prisoners about to be transported was owing to the absence of suspense; and this notion was confirmed by often hearing men in that situation say, "I know the worst, what do I care?" But I came gradually to attach less weight to the mere absence of suspense; and the change in my opinion occurred in this way.

Prisoners under sentence of transportation may be divided into two classes,—the race of regular thieves, who are habitually reckless of the future, and persons of a more steady and prudent turn, such as

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receivers of stolen goods, utterers of forgeries, and others not practised criminals, but of a higher rank in society, possessed of education, and whose first crime, perhaps, has carried them through the cells of Newgate. I had heard some of both classes talk of "knowing the worst;" but, on further inquiry, I became satisfied, that what they called the "worst" was hardly considered as an evil by either class.

The base-minded, ignorant, hardened criminal will make great exertions to avoid being transported; not because he expects to suffer any pain, either of mind or body, in the passage to the colonies or after his arrival, but because he desires to continue the mode of life to which he is accustomed, or, in other words, because he is unwilling to part with the luxuries in which a successful thief may always indulge. But, to a man of this class, the punishment of transportation amounts only to a decree, that he shall no longer rob and enjoy the fruits of robbery. Being sentenced to transportation, he is a little sorry at being cut off from what was so agreeable to him; but this is all the pain he

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suffers. "Knowing the worst," as he calls it, by which he means, only, knowing that he will no more be a robber in this country, his thoughts become fixed on the country of his destination. Now of that country, of his coming situation in it, what is the impression on his mind?

As a regular criminal he has been in the habit of associating with persons who have undergone the punishment of transportation; and from these he has received accounts partly false, but in part true, representing the state of a convict in New South Wales as by no means disagreeable. The immense distance of the place of punishment favours the circulation of false reports as to the nature of the punishment. Returned transports take delight in making it appear that they have cheated the law, (towards which all habitual criminals bear a kind of personal enmity,) and have enjoyed themselves in spite of its sentence. Moreover, a little consideration will show, that such favourable reports cannot be wholly untrue.

The man to be punished is sent to become a

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bond-servant, in a country where the value of human labour is above all price. Twenty persons have applied for him before his arrival; and he observes the greatest competition to obtain his services. He is made over to some colonial capitalist, who plainly sets a high value on the acquisition. The man, said to be punished, soon discovers his own importance. He can readily come to terms with his master; since his value to his master depends on the quantity of work that he may perform, which depends, again, on his own will. In return for a quantity of work by no means distressing,—in return for much less work than is performed by the great mass of his native countrymen, who were never criminal, and who obtain by their labour but just enough to support a miserable existence,—*he* obtains all the comforts, and many of the luxuries, which one of his habits can desire. Nay, more, whilst said to be undergoing punishment, he may save a portion of his earnings, and, with common prudence, may follow the example of his master, who probably was a convict condemned

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to punishment for life. The wealthiest portion of the settlers in New South Wales consists of persons who were transported for crimes. What an odd description of *punishment!*

Such descriptions, exaggerated in favour of the convict, are constantly spread amongst the criminal classes at home. Those classes are also aware, no doubt, that a portion of the convicts in New South Wales are subject to severe punishment, such as that of labour in chains on the roads, and that of banishment from the settled parts of the colony to some desert spot called "a penal settlement;" but they know that these punishments are inflicted for crimes committed in the colony, not for crimes committed here. As we are inquiring only into the effect of the punishment of transportation for crimes committed here, the punishments of the colony, for crimes committed there, must be left out of the account. As regards the great mass of criminals, whose sentence of death is remitted to transportation, that punishment is only a name; and of its being but a name—of its involving no

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pain—those classes show that they are well informed, by the indifference, nay, cheerfulness, with which they generally meet it.

The objections to transportation, urged as to the mass of capital convicts, may seem not applicable to the smaller class,—viz. persons of education, not habitual criminals, who have committed but one crime, and whose condition has always been superior to that of a mere labourer. For the crime of Forgery, in short, transportation may be considered an adequate punishment, notwithstanding that for burglary and sheepstealing it be no punishment at all. This, however, is not the case; as will be seen by the following brief account of the condition of such convicts in the penal colony, and of the impression of such convicts here concerning their future condition in the colony.

Until lately, a transport, having money, became perfectly free on reaching the colony. That is, being made over by the government to a settler, he and the settler came to an agreement, by which, in return for a certain payment by the convict to the

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settler, the former was allowed to do as he pleased, and was yet protected from the interference of the government by a nominal service. To a certain extent, this practice has been checked by repeated and urgent orders from the Home to the Colonial Government. In what way does the reader suppose? By sending convicts, of a superior class, to a penal settlement, and making them work for the government, as if they had committed some crime in the colony, instead of bestowing them on the settlers as bond-servants.

The regulation to this effect is not very strictly observed; two things, in particular, being opposed to its execution: first, the immense distance of the place of punishment from the supreme authority, which would be a bar to the faithful execution of any order opposed to the interest of the person commanded; and secondly, the actual contradiction, in this case, between the order given and the interest of those who should obey it. That is to say, the Governor of New South Wales is his own master in point of fact, though he be nominally respon-

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sible to the Home Government; which must ever be the case, where a servant resides 12,000 miles from his master, and a whole year is occupied in obtaining answers to letters by return of post. And next, whilst, on account of the great value of human labour in the colony, and the corruption which exists in a society constantly imbibing moral poison, it is often made for the interest of subordinates to neglect the regulation in question, the chief colonial authority himself is often interested in permitting such neglect; because, as the colony is denied the privilege of even partial self-government, its dependence can be preserved only by setting one class of colonists against another, and the Governor, therefore, is often at the mercy of certain colonial capitalists, the class of persons most tempted, by the great value of human labour, to wish that the regulation should not be strictly enforced. Besides, there can be little doubt, that hard money sometimes, and the influence of powerful men here, are used, in order to escape from that regulation. At least, I know that what are called "respectable" convicts

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under sentence of transportation, and really expecting to be transported, make the greatest exertions to have money remitted, on their account, to merchants in the colony, and for the express purpose of paying for indulgence; as well as to obtain letters of recommendation to the Governor and others, of which the object is to procure their being kept at Sydney, instead of being sent into the wilderness as slaves of the government.

Many cases of this sort came under my own observation. It may be, that neither the money nor the letters were of any use to the convicts; but of the general opinion amongst convicts, that such things are of use, there can be no doubt. The class of convicts under notice are, on the whole, impressed with a belief, that transportation to the colony offers them prospects of wealth and happiness far beyond any that they could indulge if destined to remain here. Here, as to the class in question, detection by itself is a severe punishment; there, they know, the state of society places settlers, who have committed crimes in England but none in

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the colony, on a line of equality with those who have not committed crimes any where. Here, the punishment of disgrace is unbearable; by being sent thither, they wholly escape that punishment. Here, they are without hope; by being sent thither, they are filled with hope.

Accordingly, prisoners of this class in Newgate, though they may feel a pang at the rupture of ties which bind men to the country of their birth and their affections, are no sooner convinced that their banishment is inevitable, than the state of their minds resembles that of most voluntary emigrants to distant colonies. They drive the past out of their thoughts, and dwell on the future alone; and with such earnestness, as to be almost unconscious of the present, as if they were dreaming.

I had the best means of being able to make the above statement with confidence of its accuracy. For, whilst in Newgate, I had occasion to read with care every book concerning New South Wales and Van Dieman's Land, as well as a long series of newspapers published in those colonies. Becoming

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thus pretty well acquainted with the true prospect of a convict about to be transported, and being in the habit of conversing on the subject with such prisoners, I was at length considered an authority on points in which they felt the deepest interest. This gave me a perfect opportunity of ascertaining the state of their feelings.

As a further proof, that, with convicts who inquire and reflect, "the worst" is not considered an evil, it should be stated, that immediately after the punishment of transportation becomes certain, a striking change for the better takes place in their bodily condition. Over and over again, I have seen a man, who had grown thin whilst awaiting his trial, who had lost his appetite, and whose parched lips and bloodshot eyes had proved the intensity of his mental sufferings, gain flesh, a good appetite, and a cheerful countenance, within a fortnight of being told by the judge, that he might "depend on being sent out of the country." And this statement applies, not to capital convicts, whose state of health would, of course, improve on the remission

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of capital sentence, but to convicts of minor offences, especially persons convicted of "embezzlement" under Sir Thomas Plomer's Act, who could never have expected any heavier punishment than transportation for fourteen years.

To a class of persons similar to these, allusion is made in the Introduction, where an opinion is expressed, that, as to a certain description of forgeries, the universal substitution of transportation for death, as a punishment, would lead to an increase of crime. There is a description of forgeries, as to which detection is invariably followed by death,—I mean forgeries to a very large amount,—such as those of Dr. Dodd and Fauntleroy,—in which cases the anger of society gets the better of compassion, and all combine—the prosecutor, the witnesses, the magistrate, the grand jury, the judge, the petty jury, and the tribunal of last appeal—to inflict the legal punishment. Considering the immense temptation to this crime, its rarity shows that the great check to crime is certainty of punishment. If for this crime, transportation were substituted for death,

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we should exchange a punishment, which, as to this particular crime, society is willing to make certain, for no punishment at all. To men of the station of Dr. Dodd and Fauntleroy, detection is a severe punishment. Once detected, their most earnest desire must be expatriation. If let alone, they would resort to self-banishment, as the only means of enjoying life. If at all acquainted with the state of society in our penal colonies, they would fly to one of these, as to the only place on earth, where misconduct in other places does not subject men to the ill-opinion of society. Consequently, to persons of this class, transportation to the colonies would not be an evil,—it would be a boon, though conferred by force.

Whenever the law of capital punishment shall be altered, a shift for avoiding the encouragement of forgeries for large sums would be, to leave the law as it exists as to forgeries above a given sum; but a plan more worthy of an enlightened legislature would be, the substitution, in all cases now made capital, of some milder but yet effectual punish-

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ment. Transportation, I feel convinced, is not an effectual punishment in any case; nor is there any prospect that it can ever be made effectual, since, however improved, it would involve the absurdity of endeavouring to punish at the Antipodes for crimes committed here.

THE END.

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